BEFORE THE CHIEF PASSPORT OFFICER

MINISTRY OF EXTERNAL AFFAIRS,

NEW DELHI

APPEAL NO. OF 2011

Lalit Kumar Modi
Citizen of India,
Holding Passport No. Z 1784222
through his Constituted Attorney
Mehmood M. Abdi ~~R~~residing at
A-901, Meera Towers,
Near Mega Mall, Oshiwara,
Andheri (West), Mumbai 400 053
Maharashtra _____

… Appellant

Versus

Regional Passport Officer,
Mumbai, having his office
at Manish Commercial Centre,
216-A, Dr. Annie Besant Road
Worli, Mumbai- 400 030

… Respondent

APPEAL UNDER SECTION 11 OF THE PASSPORTS ACT 1967 (" the ACT") READ WITH RULE 14 OF THE PASSPORT RULES, 1980 (" the RULES").

1. The Appellant is a citizen of India and is filing the present appeal through his Constituted Attorney Mehmood M. Abdi whose address is given above.

~~1. presently residing at (Note: To check if **please specify Lalit's London address is to be mentioned here or just to state that he left India in April 201 and is presently residing in London)**.~~

2. The Respondent is the Regional Passport Officer, Mumbai.

3. The Appellant is preferring the present appeal under Section 11 of the Act read with Rule 14 of the Rules to challenge the order dated 3rd March 2011 passed by the Respondent "Impugned Order" in the purported exercise of powers under Section 10(3) of the Act. A copy of the

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Impugned Order was served upon the Appellant's Solicitors/Advocates on Friday, the 4th March 2011. The Impugned Order purports to revoke the passport of the Appellant. The Appellant has therefore been constrained to file the present Appeal.

4. Before dealing with the Impugned Order in detail, the following submissions are being made in brief and which are to be treated as part of the grounds of challenge to the Impugned Order as set out below:

(i) The Appellant was appointed as a Commissioner of the Indian Premier League (IPL), a sub-committee of the Board for Control of Cricket in India (BCCI) sometime in the year 2008, as he had conceptualized the format of the IPL.

(ii) The IPL conducted three seasons being IPL-1 (2008), IPL-2 (2009) and IPL-1 (2010) under the aegis of the Appellant. It is an admitted position that the Appellant was credited with the concept pioneer and success of this format of cricket across the world.

(iii) On the night of conclusion of IPL-3 i.e. on 25th April 2010 the Appellant was served with a show cause notice by BCCI alleging misconduct under the BCCI Regulations and to show cause why disciplinary action should not be taken against him. Simultaneously, the Appellant was also suspended as the Commissioner of IPL. The allegations in the show cause notice were speculative, false, frivolous and vague.

(iv) One of the issues in respect of which the show cause notice was issued was in respect of the bidding process involving the Kochi

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team which became a political controversy. The Appellant craves leave to refer to and rely upon the media campaign in this regard.

(v) Simultaneously with the issuance of the show cause notice and the suspension of the Appellant, the Income Tax Department commenced investigation into the activities of the IPL. The IPL premises and also the premises of the Appellant as the Commissioner of the IPL came to be searched and voluminous records relating to the activities of the IPL were taken charge of by the Income Tax Department. In the first week of May 2010 the Appellant was summoned and questioned by the Income Tax department on several occasions.

(vi) Two more show cause notices came to be issued against the Appellant in the month of May 2010. Once again the allegations in the said show cause notices were speculative, false, frivolous and vague.

(vii) The Appellant filed his reply along with the annexures running over 15000 pages in response to the false allegations made against him in the show cause notices.

(viii) The Appellant had handed over to the BCCI all the original records of the IPL which were in his custody, as the Commissioner, sometime in May 2010. Thus, all the records relating to the IPL from its inception were in possession, custody and control of the BCCI and the Income Tax department by May 2010. Nevertheless, along with his replies to the show cause notices,

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xerox copies of all the relevant documents were once again handed over to the BCCI as part of the Disciplinary proceedings that had been initiated.

(ix) At this point of time, no other investigating agency in India had commenced any enquiry or investigation against the Appellant.

(x) Sometime in July 2010, hearing before the Disciplinary Committee commenced. The Appellant was continuously represented before the Disciplinary Committee and joined the inquiry before the Disciplinary Committee through his representatives and counsel. These inquiries continued till November 2010. There has been hiatus since then on account of various jurisdictional issues which are pending in the courts.

(xi) Sometime in or around early August 2010, the Directorate of Enforcement constituted under the Foreign Exchange Management Act, 1999 ("**FEMA Act**") commenced investigation into several activities of the IPL during the period when the Appellant was the Commissioner. Between August and September 2010 the Directorate of Enforcement issued 2 (two) summons dated Aust 2, 2010 and August 27, 2010 to the Appellant. The summons inter alia sought production of the Appellant's passport and various contracts and other documents relating to the IPL-1, IPL-2 and IPL-3. Whilst it was pointed out to the Directorate of Enforcement that the records were in the custody of the BCCI, the Appellant provided xerox copies of the documents that were available with him through his authorized representative. The Appellant expressed his inability to personally remain present (a matter on which a detailed

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submissions are being made hereinafter) but ensured that he shall give full and complete co-operation in respect of these inquiries.

(xii) The FEMA investigations were in respect of contracts executed by BCCI in respect of IPL-1, 2, & 3. The contracts were executed after due ratification by the Governing Council of IPL and many of the financial and operational decisions were taken by the then Treasurer and Secretary. All the financial dealings were under the control of the Treasurer who authorized opening of bank accounts, remittance of funds etc. Therefore the entire allegation of irregularities was levelled only on the Appellant to insist on his physical presence in the office of the Directorate of Enforcement although all the information was available with the BCCI and its then Treasurer.

(xiii) Sometime in or about October 27, 2010, Directorate of Revenue Intelligence also issued summons to the Appellant which were responded to by the representative of the Appellant and whatever documents were requested for were provided to the said agency.

(xiv) Despite rendering co-operation to the Directorate of Enforcement, on 20th September 2010 it issued a show cause notice to the Appellant under Section 13 read with Section 16 under FEMA Act alleging that the appellant had willfully disobeyed the summons issued to him. A detailed response was given, however, till date no hearing has taken place on the show cause notice and there is no adjudication or determination of the allegations that the Appellant had willfully disobeyed the summons issued by the Directorate of Enforcement.

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(xv) In this context it is significant to note that neither the Directorate of Revenue Intelligence nor the Income Tax department (which are also Revenue Investigating Agency) have made any similar allegations against the Appellant that he has willfully disobeyed any summons or avoided any investigating agency.

(xvi) On October 7, 2010 the Appellant learnt from the television news that a blue corner notice was issued against him at the behest of the Directorate of Enforcement. As per the Interpol definition, as appearing on the Interpol website, a blue corner notice is issued only for identifying a missing person. Nevertheless, the media at the behest of the Directorate of Enforcement carried out a campaign suggesting that a look out notice has been issued against the Appellant.

(xvii) Before the Appellant could even respond or react, on 15th October 2010 the Passport Authority issued a show cause notice against the Appellant.

(xviii) Thus in quick succession between 20th September, 2010 and 15th October, 2010 i.e. about 3 weeks, without any justification the Appellant was served with a show cause notice for allegedly disobeying two summons issued by ED, a blue notice or a look out notice was issued suggesting that he was absconding and a show cause notice was issued by the Passport Authority threatening action against the Appellant. It is obvious that these actions were motivated, arbitrary and based on extraneous considerations.

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(xix) In this context it is significant to write that recently the Appellant received a copy of letter dated 16th September, 2010 addressed by Mumbai Police to the Deputy Director, ED informing him that Central Agencies had information that the Appellant's life was at risk at the hands of Dawood Ibrahim. The letter was received by ED on the same day as the Complaint u/s 16 (3) under the FEMA Act which formed the basis of the Show Cause Notice dated September 20, 2010. Not only was this letter suppressed but obviously not taken into account whilst issuing the Show Cause notice on September 20, 2010. Also that letter was suppressed from the Passport Authority. There is no explanation for this suppression. The only inference is that all actions of the ED are motivated.

(xx) Furthermore, after Summons dated November 24, 2010, no further summons have been issued to the Appellant and yet the impugned order has been passed after the last summons to "induce" the Appellant to appear before the ED.

(xxi) The show cause notice issued by the Passport Authority stated that the same was being issued on the information by the Directorate of Enforcement that a complaint dated 16th September 2010 under Section 13 had been filed against the Appellant and a show cause notice had been issued to the Appellant on 20th September 2010 for non compliance of the summons issued by them. The show cause notice called upon the Appellant to offer an explanation as to why action under Section 10(3)(c) of the Passports Act, 1967 should not be initiated. In response to the Appellant's demand for natural

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justice, the Passport Authority by its letter dated 1st November 2010 inter alia extracted some of the information purportedly in the interest of natural justice and fairness. The information of the Directorate of Enforcement inter alia stated that, "*it would be in public interest in general and in the interest of a thorough investigation into the grave irregularities committed by Shri Lalit Kumar Modi in particular, that his passport is impounded so that his attendance in compliance of the summons could be enforced*". This letter thus clearly indicated that the action requested for and proposed was an action to impound the Appellant's passort to secure his attendance to the Summons. The said letter of the Passport Authority then went on to give 10 days' time to the Appellant to file a reply, failing which necessary action under Section 10(3)(c) would be initiated by it.

(xxii) The Impugned Order instead of impounding the Appellant's passport as requested by the Directorate of Enforcement, has taken the extreme and draconian step of revoking the Appellant's passport in exercise of power under Section 10(3)(c). It is apparent that the Passport Authority has acted beyond the request of the Directorate of Enforcement and contrary to and in excess of the show cause notice issued to the Appellant.

(xxiii) It is further submitted that the non application of mind by the Passport Authority is ex facie apparent from the second para of the Order which states:-

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"And it …. the Directorate of Enforcement, Mumbai vide letter No…… dated 04.10.2010 …….. that a Show Cause Notice has been issued to him on 20.09.2010 and requested to take suitable action of revocation of passport of Shri Lalit Kumar Modi u/s. 10(3)(c) of the Passports Act, 1967 in the public interest."

(xxiv) However, in letter dated 1st November 2010, there is no request by the Directorate of Enforcement for the revocation of the Appellant's passport. The only request was to impound the passport. On that ground alone the Impugned Order is liable to be set aside. It is submitted that the revocation brings about the finality to the Appellant's right to travel which is guaranteed under the Constitution and has deprived the Appellant permanently of his fundamental right. The Impugned Order nowhere provides any justification for taking the extreme steps of permanently depriving the Appellant of his fundamental right by revoking the passport. Whilst depriving the Appellant of his fundamental right the test of the object and its proportionality must be satisfied. The Impugned Order does neither.

(xxv) Without prejudice to the aforesaid, and in the alternative it is submitted that on a perusal of the letter dated 15th October 2010, it would appear that the basis of action under the Passports Act is on account of a complaint and show cause notice issued against the Appellant by the Directorate of Enforcement under Section 13 of the FEMA Act. The real object and intent of the Authority was to suggest that a show cause notice being a legal proceeding was pending against the Appellant, and that the action was akin to section 10(3)(e) which provides as under:-

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"If proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before the Criminal court in India."

(xxvi) However, realizing that the proceedings in respect of the alleged contravention are not before a "criminal court" the provisions of Section 10(3)(c) were invoked. It was for this reason, that no reference was made about the investigation and the need to induce his present in India through action against in presence. It was to secure his presence for the adjudication proceedings. Therefore, an attempt has been made to doindirectly what could not be done directly. Since it was realized that the provisions of Section 10(3)(e) could not be invoked , falsely the provisions of Section 10(3)(c) were invoked.

(xxvii) Without prejudice to the aforesaid, it is further submitted that the Directorate of Enforcement had requested the Passport office to impound the passport so that the Appellant's attendance in compliance of the summons could be enforced. It is submitted that a passport cannot be impounded and a citizen's fundamental right cannot be trample upon to achieve an object which is not contemplated under the provisions of the Passports Act,

(xxviii) In ***Satwantsingh Sahney case [AIR 1967 SC 1836]*** the Constitution Bench of the Supreme Court issued a writ of mandamus directing the Passport Authority to withdraw and cancel their letter calling upon the petitioner to return his passport to the Union of India as it was decided to withdraw the passport facility to the petitioner. The Passport Authority and Union of India

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contended before the Supreme Court that the petitioner had contravened the conditions of the import license obtained by him and that the investigations were going on against him in relation to the offences under the Export and Import Control Act and that the Passport Authority was satisfied that if is Petitioner was allowed to continue to have the passports, he was likely to leave India and not return to face a trial and therefore his passports were impounded. The Constitution Bench upheld the petitioner's contention that the petitioner's fundamental rights to travel were infringed by impounding his passports.

(xxix) It is thus apparent that the mere pendency of investigations is no ground for impounding a person's passport. It is submitted that if the passport could not even be impounded there is no question of taking the harsher step of revoking the passport. It is further submitted that it is apparent from the undermentioned finding that the Regional Passport Officer has sought to revoke the passport of the Appellant to facilitate the Directorate of Enforcement's objective of securing the Appellant's presence in the investigation:

> "*This office is therefore satisfied that public interest requires that Shri Lalit Kumar Modi make himself available for investigation, but Shri Lalit Kumar Modi is deliberately absenting himself from the authorities, in order to scuttle/hamper the investigations, into a matter which is significantly important in the interest of general public". "…It is therefore necessary that necessary action be taken to induce his presence.*"

(xxx) It is submitted that revocation of a passport is a matter of last resort and can be undertaken in the rarest of rare case or situation since

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the revocation of the passport seeks to permanently impinge upon the citizen's fundamental right to travel. Any action which tramples upon the citizen's fundamental rights must be undertaken only when it is absolutely necessary and only after strict compliance of the procedures established by law.

(xxxi) The Hon'ble Supreme Court in CBI V/s. Dawood Ibrahim Kaskar [AIR 1997 SC 2494] held that a court does not have a power to issue a warrant in aid of an investigating agency. That was a case where the CBI sought the presence of Dawood Ibrahim to assist their investigations into the Mumbai blast case of 1993. The CBI moved an application before the Special Court for issuance of warrant of arrest against Dawood Ibrahim to secure his presence from overseas facilitated through investigation into the case. The Supreme Court in the context observed as under:-

> "25. … *Since warrant is and can be issued for appearance before the court only and not before the police and since authorization for detention in police custody is neither to be given as a matter of course nor on the mere asking of the police but only after exercise of judicial discretion. Based on the materials placed before him Mr. Desai was not absolutely right in his submission that arrant of arrest under Section 73 of the Code could be issued by the court solely for the production of the accused before the police in aid of investigation.*"

(xxxii) It is submitted that if the court cannot issue a warrant to secure a person accused of an offence before the police in aid of investigation, on the same rational the passport cannot be revoked to secure /induce presence of a person outside India before the

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investigating agency. More so, when the investigating agency has the option to take recourse to various other methods and modalities for securing assistance of a person overseas for their investigation.

(xxxiii) The following methods were available to the Directorate of Enforcement to secure assistance of the Appellant in investigation, none of which were attempted nor exhausted before trampling down the Appellant's fundamental rights The modalities and provisions are as under:-

i) a questionnaire could have been sent to the Appellant overseas;

ii) interrogation through video link could have been undertaken;

iii) the officers of Directorate of Enforcement could visit the Appellant overseas and interrogate him;

All the above three modalities were voluntarily suggested by the Appellant in his correspondence with the Directorate of Enforcement to which there was no response;

iv) India has signed a mutual legal assistance treaty with the United Kingdom to facilitate criminal investigations including revenue offence. Steps could have been taken underthis Arrangement.

v) Section 166A of the Cr.P.C. provides for dispatch of a letter rogatory for overseas investigation.

vi) The Officer of ED exercise powers under the Income Tax Act. Section 131 confers powers as are vested in a Civil Court, when trying a suit inter alia in respect of following matters: ~~of~~

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~~a civil court under Order 5 of the Code of Civil Procedure to (i) summon and (ii) commission.~~

(i) Issuing of summons

(ii) Issuing of commissions

(xxxiv) Under FEMA the Enforcement Officer does not have the power to arrest or undertake custodial interrogation. All interrogation or investigations are undertaken during the office hours without any detention of the deponent. Consequently it would have made no difference to the Directorate of Enforcement to follow any of the aforementioned modalities of interrogation. Furthermore, these modalities would not have infringed upon the fundamental rights of the Appellant.

(xxxv) Despite the same the Directorate having ample powers to investigate and interrogate the Appellant, they chose to adopt a method to secure the Appellant's presence in India by trampling upon his fundamental rights rather than following the procedure established by law, which would avoid violating any person's fundamental rights. The Regional Passport Officer not only mechanically and without due application of mind adopted the platitudes of the Directorate in passing the order of revocation (although Directorate of Enforcement only asked for impounding).

(xxxvi) Without prejudice to the aforesaid it is submitted that the Regional Passport Officer has without applying his mind to the material on record and submissions advanced, disregarded the serious threat to the life of the appellant which prompted the Appellant to leave

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the country. The Appellant left the country several months prior to the commencement of the investigation by Directorate of Enforcement, the reasons for which were set out in greater detail in his reply dated November 26, 2010 and in the written submissions dated 6th December 2010. Without considering the import of this contention the Officer has inter alia made the following observation in the Impugned Order:

> *"It is not difficult to make out that Shri Lalit Kumar Modi is refusing to present himself on the pretext that there is a serious deterrent to his presence in India … No evidence has been placed on record that the security threat perception to Shri Lalit Kumar Modi has increased since the time the first summons has been issued by the Directorate of Enforcement".*
>
> *"… Having satisfied myself that there is a genuine need and no justificable reason for the Noticee absenting himself and that the ground raised by him are hollow and not deterrent enough to prevent his presence in India, it is therefore necessary that necessary action be taken to induce his presence…"*
>
> *"..The fact that he is deliberately absenting himself is borne out from the specious defense put forward by him. The bogey of a security threat is virtually non existent by virtue of the fact that the Mumbai Police have offered him police protection in addition to the security agencies who are already at his continuous service."*

(xxxvii) It is submitted that it was the duty of the Passport Authority to have ascertained the correct facts before jumping to the conclusion that the contention of the Appellant was a mere pretext or a bogey and

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that no adequate evidence was placed on record. The Passport Authority has not considered the material on record and described the Appellant's apprehension as "specious" and the "bogey" over the security threat or "pretext" of a serious deterrent completely disregarding the facts contained in various correspondences between the Appellant and the Mumbai police which were placed on records along with his reply.

(xxxviii) It is submitted that it was the duty of the passport Authority, to consider the Appellant's right to live, guaranteed under Article 21, to mean his very existence not only in spiritual or philosophical but in a physical sense itself. There was more than ample evidence on record to show that the Appellant had received a threat to his life as also that the Mumbai police had not given adequate protection. The Appellant was duty bound to take steps to protect his physical existence especially when the police did not take adequate steps to protect him. It was more than apparent that the higher need was to protect the Appellant's life and not to "induce" his physical presence in India, a place where he suffered risk to his very existence, his life. More so when there were reasonable alternative methods to interrogate him especially when the Appellant had readily shown his willingness to cooperate.

(xxxix) The Appellant had submitted that the Passport Authority should have called for information from the Mumbai Police to verify the Appellant's contention or sought for the information from the Directorate of Enforcement in this regard. The Appellant also sought for cross examination of the officers of the Directorate of

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Enforcement to establish these facts. However, no such steps were taken by the Passport Authority and the same has come to the aforementioned conclusion against the Appellant. I would appear that he deliberately chose not to make enquiries and it would have been established the Appellant's contention and he would not have been able to pass the impugned order. In this regard it is relevant to note that the Appellant recently exercised his right under the Right to Information Act and received a copy of the communication dated 16th September 2010 addressed by Deven Bharti, Additional Commissioner of Police (Crime) Mumbai to Samir Bajaj, Dy. Director of Enforcement, Mumbai wherein he states "apropos submit and reference mentioned above, Shri Lalit Kumar Modi has been provided with police protection on the basis of intelligence imputs received from the Central Agency about the threat to his life from gangster Dawood Ibrahim and his associates." It is thus proved beyond doubt that the plea of the Appellant is neither vicious nor a bogey nor a pretext. It is also significant to note that this communication was addressed on 16th September 2010 to Directorate of Enforcement and received on the same date that is to say on the same date on which a complaint was filed against the appellant alleging willfull disobedience of compliance of the summons issued upon him. This communication by Mumbai Police to the Directorate of Enforcement appears to have been suppressed by the Directorate of Enforcement in its communication to the Passport Authority. The Passport Authority has not acted on the submissions and request of the Appellant to call for these

records from the Mumbai police and independently verify the facts regarding the threat perception.

(xl) Whilst there may be public interest in the investigation especially a revenue investigation, if that public interest conflicts with the life of a citizen and without alternative reasonable legitimate and legal methods, for securing the assistance in investigations are available, it is the duty to first protect the life. Life is the highest fundamental right which needs to be protected.

~~3.~~ Without prejudice to the aforesaid, the Constitutional Bench in the case of Smt. Maneka Gandhi V/s. Union of India [AIR 1978 SC 597] held that "the expression "interest of general public" in Section 10(3) (c) must be reed down so as to be limited to "interest of public order, decency or morality" if the order restricts the freedom of speech or expression. The Impugned Order does not justify the revocation of the Appellant's passport on ground of interest of public order, decency or morality. The revocation restricts Appellant's rights under Article 19 of the Constitution of India.

Brief Statement of Facts:

~~4.~~5. The Appellant is setting out below a concise Statement of Facts so as to facilitate a fuller and/or better appreciation of the grounds taken in the present appeal. The Appellant, repeats, reiterates and confirms all the statements, submissions and averments in the various communications submitted by the Appellant to the Respondent, as a part of the adjudicatory process commenced by the issuance of a show cause notice, as if the same are specifically incorporated herein. The Appellant is also

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filing along with this appeal a compilation containing the entirety of the record of the proceedings before the Respondent and prays that the same be treated as forming part of the Appeal. In the Concise Statement of Facts, set out below, the Appellant shall particularly advert to a few of the important communication and/or documents.

~~5.~~6. A Concise Statement of Facts relevant for the present appeal is set out below:

a) On 15th October 2010, the Assistant Passport Officer (Policy) (and not the Respondent herein) addressed a communication to the Appellant, inter alia, stating:

> "*It is informed by the Directorate of Enforcement, Mumbai that a complaint dated 16.09.2010 under section 13 of FEMA, 1999 has been filed against you and a show cause notice has been issued to you on 20.09.2010 for non-compliance of summons issued by them.*
> *In view of this, you are called upon to explain as to why action under Section 10(3)(c) of the Passports Act, 1967 should not be initiated against you."*

A copy of this communication is included in the Compilation under **Tab 1**.

b) The Appellant's Advocates responded thereto by their letter dated 26th October 2010. In the said letter, the Appellant's Advocates whilst adverting to the provisions of Section 10(3)(c) of the Act, recorded that even at the threshold / initial stage of calling upon the Appellant to explain why action under Section 10(3) (c) of the Act should not be initiated, principles of natural justice were required to be scrupulously followed. The Appellant Advocates recorded that the Appellant had not been accused of doing anything which could

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be said to fall under any of the categories mentioned in Section 10(3) (c) of the Act and therefore there was clearly no basis or justification for instituting any proposed proceedings under Section 10(3) of the Act. The Appellant Advocates further record that in any event, proceedings ought not to be instituted merely on information supplied by the Enforcement Directorate that a complaint under Section 13 of FEMA had been filed against the Appellant and a show cause notice had been issued to him. The Appellant Advocates recorded that principles of natural justice and fairness warranted that before an informed decision was taken by the Assistant Passport Officer (Policy) on whether or not to commence proceedings against the Appellant, it was essential that the material and information stated in the letter be provided to them. The Appellant's Advocates therefore requested the Assistant Passport Officer (Policy) to furnish / provide them with the following information so as to enable them to file a complete reply to the letter dated 15th October 2010. The information sought for was:

"*a. All information, material, communications and documents referred to and/or relied upon in the letter under reference;*

b. Any other relevant material available with you, not referred to and/or relied upon in the letter under reference, including but not limited to the letters dated 5th October 2010 and 15th October 2010;

c. grant of a reasonable time of two weeks, from the date of supply of the information, material, communications and documents mentioned in para (i) and (ii) above, to submit a Reply".

Whilst making the said request the Appellant Advocates also as and by way of a preliminary response stated that:

"*a. the letter under reference; the inquiry; and proceedings contemplated, are without jurisdiction;*

b. Section 10(3) of the Passports Act, 1967 is not attracted;

c. The only ground stated in the letter under reference, relates to a Complaint, said to be, under Section 13 of FEMA, alleging non-compliance of a summons issued and a show cause notice dated 20th September 2010, issued by the Enforcement Directorate under FEMA;

d. In this context it is important to point out that the mere non-compliance of a summons, if any, cannot per se be a ground for cancellation of Passport;

e. No proceedings, under Section 10(3) of the Passports Act, 1967 can or should be instituted and no proposed show cause notice under Section 10(3) of the Passports Act, 1967, should therefore be issued;

f. It may also be mentioned that all documents called for by the Enforcement Directorate, which were in our client's possession, have already been supplied".

The Appellant Advocates concluded the letter by observing that the Foreign Secretary, Government of India had in a Press briefing in the context of the Appellant's passport, specifically adverted to two communications being letters dated 5th October 2010 and 15th October 2010, which were not referred to in the letter dated 15th October 2010. The Appellant Advocates therefore stated that they would be grateful if copies of these letters were made available to them. A copy of this communication is included in the Compilation under **Tab 2**.

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c) The letter dated 15th October 2010, required the Appellant to furnish his explanation on why action under the Act should not be initiated against the Appellant within 15 days from the date of the issuance of the letter. The letter was issued on 15th October 2010 and therefore the period of 15 days would expire on 30th October 2010. The letter had however been received at the erstwhile office of the Appellant on 19th October 2010 by the security staff and was cited by the Appellant on 20th October 2010. As strict time lines had been prescribed for submitting the Appellant's response and as no response to the communication dated 26th October 2010 had been received, the Appellant's Advocates by their letter dated 28th October 2010 recorded the above facts and requested that to avoid any ambiguity, the Assistant Passport Officer (Policy) confirm the deadline within which the Appellant was required to submit his reply and whether the material requested by the Appellant's Advocates would be supplied to them. By the said letter the Appellant's Advocates therefore recorded that they did not want any surprises and that fairness and interest of justice demanded that this simple request be clearly and urgently responded to. By the said letter the Appellant's Advocates therefore requested the Assistant Passport Officer (Policy) to let them have his written response by 12 noon on the same day. A copy of this communication is included in the Compilation under **Tab 3**.

d) Since no response was received to the said communication, the Appellant's Advocates telephonically spoke to the Assistant Passport Officer (Policy) on 28th October 2010 who confirmed that the letters from the Appellant's Advocates had been received and

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that the same were being examined by the Passport Officer who was processing the same. The Appellant's Advocates were informed that no response could be given to the request contained in their letter on the telephone, the Appellant's Advocates therefore addressed a letter dated 28th October 2010 recording the above facts and the extreme urgency of the matter and seeking an urgent response from the Assistant Passport Officer (Policy) by 3 pm on the same day. A copy of this communication is included in the Compilation under **Tab 4**.

e) When no response was received to the said request, the Appellant's Advocates addressed a further communication recording the above and the fact that no response was being offered to simple questions viz., what was the deadline for submitting the Appellant's reply and when the material sought for would be supplied. The Appellant's Advocates recorded that the failure to get a response to this simple request was becoming a cause for concern and anxiety to the Appellant and he was serious apprehensive that some ex-parte order may be passed against the Appellant. The Appellant's Advocates therefore by the said communication also recorded that they desired to appear before the Assistant Passport Officer (Policy) and represent the case in person. The Assistant Passport Officer (Policy) was therefore requested to inform the Appellant about when the oral personal hearing would be fixed. A copy of this communication is included in the Compilation under **Tab 5**.

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f) As no response was received even to the said communication, the Appellant's Advocates addressed yet another communication dated 29th October 2010, recording the complete failure to respond to any of their earlier requests and requesting a response to their repeated requests. In the said communication the Appellant's Advocates recorded that:

"*4. the continued stone walling of a response to our basic requests, repeated over and over again, is now getting bewildering. We are sure the Passport Officer would have by now advised you on how to respond.*

5. What is completely baffling is why you do not even specify what the deadline for submitting our client's Reply is. Surely this courtesy and fairness ought to be extended by a person who discharges an important quasi judicial statutory function affecting the fundamental rights and civil liberties of a citizen.

6. Our client is now apprehensive that an ex parte order will be passed against him".

A copy of this communication is included in the Compilation under **Tab 6**.

g) The original communication dated 15th October 2010 specified that the Appellant should respond within 15 days from the issuance of the letter. As the Appellant's Advocates did not want a situation where an ex-parte order was passed against the Appellant for failing to respond to the communication dated 15th October 2010 despite the Assistant Passport Officer (Policy) not having provided the information sought for or having responded to any of their earlier communications, the Appellant's Advocates by their letter dated 30th October 2010, whilst recording the aforesaid events, once again reiterated their demand, particularly that the material

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sought for be made available to them. The Appellant's Advocates recorded that the act of not making available the said material constituted a clear breach of the principles of natural justice and violated the Appellant's legal and fundamental rights. The Appellant's Advocates also recorded that this was also in violation of the constitutionally mandate rule of fairness and reasonableness. The Appellant Advocates recorded that these principles have been repeatedly emphasized by the Hon'ble Supreme Court of India including in matters under the Act. The Appellant's Advocates recorded that the continued silence on the part of the Assistant Passport Officer (Policy) to respond to their letters seeking and demanding the basic requirement of supply of material referred to and relied upon, had given rise to a serious apprehension in the mind of the Appellant that the communication dated 15th October 2010 had been issued for ulterior purposes, knowing fully well that the same was without jurisdiction, unjustified, based on extraneous consideration, on the dictation of unauthorized person and to cause undue harassment. The Appellant's Advocates also recorded that the present case was not one of any emergences where the requirement of natural justice could be cured post a decision being taken. By the said communication the Appellant's Advocates also submitted an interim response to the communication dated 15th October 2010, particular the Appellant's Advocates recorded:

i. the jurisdiction under section 10(3)(c) of the Act was an extraordinary jurisdiction which ought to be resorted to with great circumspect. The power and/or jurisdiction under Section 10(3) of the Act was one which had far reaching

consequences on the fundamental rights of a citizen and it was therefore necessary and imperative that before any proceedings were instituted and a show cause notice under Section 10(3) of the Act issued, the Assistant Passport Officer (Policy) ought to be satisfied that there existed material to warrant doing so.

ii. Ex-facie, the provisions of Section 10(3)(c) of the Act had no application and consequently the communication dated 15th October 2010 was without jurisdiction and/or misconceived. The Appellant till date had not been accused of doing anything, which could be said to fall under any of the categories mentioned under Section 10(3) (c) of the Act.

iii. Without prejudice to the above the proposed proceedings under Section 10(3) of the Act could not and in any event ought not to be instituted merely on information supplied by the Enforcement Directorate about the filing of a complaint under Section 13 and the issuance of a show cause notice pursuant thereto. The Assistant Passport Officer (Policy) had declined to give inspection of the documents on the basis of which the communication dated 15th October 2010 had been issued and it must therefore be presumed that he was not aware of the contents of the show cause notice or the relevant facts. The Appellant's Advocates therefore elaborately set out the correspondence exchanged between the Enforcement Directorate and the Appellant's Advocates. This correspondence had been extensively referred to in

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paragraph 10 of the letter dated 30th October 2010 and, the Appellant, to avoid burdening the record, is not specifically adverting to the same.

iv. The Appellant however submits that a bare perusal of the said correspondence, clearly indicates that the stand of the Enforcement Directorate taken in the complaint dated 16th September 2010 and the show cause notice dated 20th September 2010, were ex-facie erroneous, illegal, misconceived and clearly on account of *malafide* consideration. In the correspondence with the Enforcement Directorate the Appellant's Advocates / Appellant had specifically set out that the failure of the Appellant to personally remain present pursuant to the summons issued by the Enforcement Directorate was not willful or deliberate but on account of legitimate security concerns and that therefore neither should a complaint had been made nor should a show cause notice had been issued. The proceedings commenced by the Enforcement Directorate therefore clearly spelt out a predetermination and malafides were writ large on the record.

v. The Appellant, particularly referred to the fact that the Enforcement Directorate had even without awaiting the response of the Appellant to the show cause notice dated 7th October 2010, issued a look out circular (blue corner notice). The Appellant had in his communications with the Enforcement Directorate expressed his full cooperation and

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his willingness to answer all question which the Enforcement Directorate may desire to put to him including by submitting a written response; appearing through video conference; attending before the Officers of the Enforcement Directorate at London.

vi. The Enforcement Directorate was itself yet to adjudicate upon the show cause notice, which it had issued and to which the Appellant had already submitted his response. No proceedings could be initiated by the Assistant Passport Officer (Policy), or under the Act on the basis of an un-adjudicated complaint from the Enforcement Directorate. The Enforcement Directorate had yet to adjudicate upon its own show cause notice under Section 13 of FEMA. This denuded the very foundation of the communication dated 15th October 2010. In any event, Section 13 of FEMA was clearly inapplicable. As the Enforcement Directorate was itself yet to decide upon the legality, validity and the correctness of the allegations contained in the show cause notice it would occasion a serious miscarriage of justice if pending such adjudication proceedings leading to the revocation of the Appellant's passport were initiated.

vii. No show cause notice had been issued to the Appellant alleging any substantive violation of any of the provisions of FEMA. The show cause notice issued to the Appellant by the Enforcement Directorate therefore did not even accuse the Appellant of having violated any substantive provisions of

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FEMA. It only called upon the Appellant to show cause and/or explain his failure to attend in person pursuant to summons being issued to him by the Enforcement Directorate. There was therefore no basis or justification for instituting any proposed proceedings under Section 10(3) of the Act against the Appellant.

viii. As a matter of law the jurisdiction under Section 10(3)(c) of the Act could not be assumed nor could proposed proceedings be instituted or a show cause notice issued on the basis of a summons issued by the Enforcement Directorate. A summons issued by the Enforcement Directorate was not a court summons or a warrant and in issuing the communication dated 15th October 2010, this vital distinction between the two was lost.

ix. The powers under Section 10(3)(c) of the Act were being used as an instrument or a means to coerce the Appellant to attend before the Officers of the Enforcement Directorate regardless of concerns about the safety of the Appellant's life and his security. This was legally impermissible. The power under Section 10(3)(c) of the Act was a drastic and draconian power whose ultimate result would visit serious consequences and implications on the civil liberty of the Appellant. There were ample alternatives available in law including under the Income-Tax Act and FEMA to send Commission pursuant to a summons issued under the Act.

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The draconian power under Section 10(3) of the Act could not be used as a substitute for the same.

x. The stated basis of the communication dated 15th October 2010 was the request made by the Enforcement Directorate. Admittedly, the Enforcement Directorate was looking into matters covered by the provisions of FEMA. FEMA was a statute, which only involved civil penalties, and there was no scope for custodial interrogation under FEMA. The questioning of the Appellant in United Kingdom or by videoconference would therefore have survived and the insistence by the Enforcement Directorate of the Appellant's personal presence was therefore unnecessary.

xi. The communication dated 15th October 2010, had been issued mechanically, without application of mind and on an express instructions or directions from higher authorities and/or the Enforcement Directorate. The same had also been issued in unnecessary haste and on the dictates of higher ups. The fact that in this case the Foreign secretary had given a media brief stating that in the absence of a reply by the Appellant action would be taken against him clearly establish the aforesaid.

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xii. The Appellant's Advocates concluded the said letter dated 30th October 2010 by reiterating their desire that the personal hearing be given to the Appellant through this lawyers after furnishing the material sought for and reserving

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their right to file a further and detailed reply once the information sought for was received. A copy of this communication together with a large number of documents submitted therewith included in the Compilation under **Tab 7**. The documents supplied along with the Appellant's Advocates letter dated 30th October 2010 included correspondence exchanged between the Appellant and the Mumbai Police (which had been duly supplied to the Enforcement Directorate) which clearly established that there existed credible information (obtained by the Mumbai Police from reliable intelligence agencies) that there was a serious risk to the Appellant's life. The existence of this security risk has now been confirmed by the Mumbai Police in its response to an application submitted by the Appellant under the Right to Information Act. A copy of the response dated February 9, 2011 pursuant to a request being made under the Right to Information Act is included in the Compilation under **Tab 8**. For convenience the Appellant is also filing a chronology adverting to the correspondence exchanged between the Appellant/Appellant's Advocates with the Enforcement Directorate, since it is the request from the Enforcement Directorate, which was the basis for the issuance of the communication dated 15th October 2010. A copy of this chronology is included in the Compilation under **Tab 9**.

h) The Assistant Passport Officer (Policy) responded to all the communications addressed by the Appellant's Advocates by his communication dated 1st November 2010. A copy of this communication is included in the Compilation under **Tab 10**. This communication was totally confusing / perplexing to say the least. It firstly rejected the request made for providing information, material, communications and documents which were relied upon for the issuance of the show cause notice by stating that the letters from the Enforcement Directorate dated 4th October 2010 and 15th October 2010 were confidential in nature and constituted correspondence between two Government departments and therefore copies thereof cannot be supplied. The letter then extracted "content", (under inverted commas) which made no sense but appeared to be a selective extract of some correspondence between the Enforcement Directorate and the Assistant Passport Officer (Policy). The said letter then stated that an additional period of 10 days was being granted to the Appellant for filing his reply and if no reply was received necessary action under Section 10(3)(c) would be initiated.

i) The Appellant's Advocates therefore by their letter dated 10th November 2010 strongly objected to the communication dated 1st November 2010. The Appellant's Advocates reiterated: -

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i. that the Appellant be furnished with the material sought for, including but not limited to the letters dated 5th October 2010 and 15th October 2010 and any other relevant material available with the Assistant Passport Officer (Policy).

ii. The Assistant Passport Officer (Policy) was not acting as an official in an administrative capacity of a Government Department but was discharging an important quasi-judicial function/duty under the Act. The Assistant Passport Officer (Policy) was acting as a Judge in an adversarial lis where the contesting parties were the Enforcement Directorate and the Appellant and therefore could not refuse to make available copies of the communications exchanged between the Enforcement Directorate and him on the ground that they were confidential in nature and constituted correspondence between two Government Departments.

iii. It was a concomitant and requirement of natural justice and fairness and a cardinal, basic and minimal requirement of the principles of natural justice that the Appellant be supplied with the material which was proposed to be relied upon and/or used against him. This material included the letters dated 4th October 2010 and 15th October 2010.

iv. The Hon'ble Supreme Court of India had from time to time including in a judgment in the case of **Kothari Filaments** emphasized that a person charged with an illegality (in that case a misdeclaration under the Customs Act) was entitled to know the ground on the basis whereof he would be penalized and this would include him being supplied with documents, since only on knowing the contents of these documents could be furnish an effective reply.

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v. Even in proceedings under the Official Secrets Act, courts had consistently taken the view that an accused was entitled to copies of all documents relied upon. This was following the concept of "procedure", as interpreted in the case of **Maneka Gandhi vs Union of India** (which was a case under the Passport Act).

vi. The withholding of material on the ground that the same was confidential in nature or constituted correspondence between Government Departments was therefore totally specious and untenable for several reasons and violated all principles of natural justice.

vii. The communications between the Enforcement Directorate and the Assistant Passport Officer (Policy) were not mere inter Departmental correspondence but communications on the basis of which proposed proceedings under the Passport Act were to be instituted. These would ultimately result in very serious consequences to the Appellant's liberty and the enjoyment by him, of his fundamental rights. These therefore ought to be made available.

viii. There was no principle of law, which stipulated that correspondence between two Government Departments could be withheld from a contesting party during the course of a lis. Also merely because such correspondence was said to be confidential was no ground for withholding the same.

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ix. The decision not to supply the material sought for was a regressive decision, particularly where the State was promoting a Right to Information under the Right to Information Act, 2005 which entitled even a third party to such information. To deny this information to the Appellant therefore would be manifestly unfair.

x. The content extracted in the letter dated 1st November 2010 was ambiguous and a cause for confusion. The content extracted under inverted comma was totally disjointed and indicated that several parts had been deleted. The letter dated 1st November 2010 also did not indicate from where this content had been extracted.

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The Appellant's Advocates therefore by the said letter sought further particulars set out therein and also reiterated that the entirety of the correspondence which was available with the Assistant Passport Officer (Policy) be made available to the Appellant. A copy of this communication dated 10th November 2010 is included in the Compilation under **Tab 11**.

j) By the letter dated 1st November 2010, the Assistant Passport Officer (Policy) had called upon the Appellant to submit a response within 10 days from the date of issuance of the letter. The Appellant in response thereto requested the Assistant Passport Officer (Policy) for documents/ material. When the same was not forthcoming even by the 11th of November 2010, the Appellant addressed a reminder letter to the Assistant Passport Officer

(Policy). A copy of this communication is included in the Compilation under **Tab 12**.

k) Without responding to the requests made in the letters addressed by the Appellant's Advocates or supplying any of the information and/or materials sought for by them, or providing any of the confirmation requested, the Assistant Passport Officer (Policy), on 15th November 2010 addressed a communication to the Appellant's Advocates informing them that a hearing had been fixed on the next day (16th November 2010). A copy of this communication is included in the Compilation under **Tab 13**.

l) As the Appellant's Advocates had less than 24 hours notice of the date fixed for the personal hearing and as the Counsel who were to appear in the matter were unavailable on account of long standing prior court commitments (part heard matters before the High Court and in the Supreme Court) the Appellant's Advocates sought that the hearing be deferred to the next working day. A copy of this communication is included in the Compilation under **Tab 14**.

m) In response thereto the Assistant Passport Officer (Policy) by his letter dated 16th November 2010 informed the Appellant's Advocates that the hearing would be held on 18th November 2010. A copy of this communication is included in the Compilation under **Tab 15**.

n) The letter dated 16th November 2010 from the Assistant Passport Officer (Policy) described the personal hearing as being for "*Proposed action to impound/revoke the passport of Shri Lalit*

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Kumar Modi". The Appellant's Advocates therefore by their letter dated 18th November 2010 recorded that the personal hearing scheduled could not be for any action to impound/revoke the passport of the Appellant. The personal hearing had been convened to adjudicate upon the request contained in the letters dated 10th November 2010 and 11th November 2010 for the Appellant being furnished/supplied with relevant documents, afforded an opportunity of inspection and being supplied with information requested. The revocation/impounding of the Appellant's passport was not even in contemplation at that stage as was clear from the correspondence exchanged with the Passport Office. The communications addressed by the Passport Office themselves stated that the inquiry before the Assistant Passport Officer (Policy), at that stage, was whether the explanations / response submitted by the Appellant was satisfactory and the proposed proceedings ought not to be instituted. There was no question of any revocation or impounding of the Appellant passport even before a decision on whether or not to institute proceedings on revocation/impounding could be taken. By the said communication the Appellant's Advocates therefore once again reiterated that:

a) the documents and information called for by them be granted;
b) they be given an opportunity to inspect the same;
c) they be given an opportunity to respond to the same;
d) that the relevant records from the Enforcement Directorate and the Mumbai Police be called for;

e) that the Appellant's Advocates be provided inspection and copies of these documents;

f) in any event, the Assistant Passport Officer (Policy) be pleased to provide the Appellant's Advocates with the records and information referred to in his letter of 1st November 2010 and if not, at least, inform them of the basis on which he had come to the conclusion that these could not be provided.

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The Appellant's Advocates therefore requested that after the said material being made available to them a convenient date for the personal hearing be fixed. A copy of this communication is included in the Compilation under **Tab 146**.

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o) On 18th November 2010, the Appellant's Advocates attended the Passport Office at Mumbai for the purposes of a hearing before the Assistant Passport Officer (Policy) when a strange set of development took place. Until this time all communications had been addressed by and to the Assistant Passport Officer (Policy). The Assistant Passport Officer (Policy) had issued the communication dated 15th October 2010, commencing the proceedings. The Assistant Passport Officer (Policy) had decided on the request to supply material. All correspondence and / or communications between the Appellant and / or his Advocates were with the Assistant Passport Officer (Policy). The Appellant's Advocates were therefore surprised when at the hearing, the Regional Passport Officer (to whom the Assistant Passport Officer (Policy) was subordinate) participated in the hearing. On noting the

presence of the Regional Passport Officer, the Appellant's Advocates objected by stating that the adjudicating authority was the Assistant Passport Officer (Policy) and that it was improper for his superior officer to remain present at the hearing. The Appellant's Advocates therefore objected on the ground that the Assistant Passport Officer (Policy) was acting under the dictates of the Regional Passport Officer and that the Regional Passport Officer not being the adjudicating authority, could not participate in the hearing. In response thereto, the Assistant Passport Officer (Policy) and the Regional Passport Officer informed the Appellant's Advocates that the Regional Passport Officer was the Head of the Regional Passport Office at Mumbai and could therefore do so. The Appellant's Advocates thereupon made a request that this objection be recorded and a decision be passed on this objection. Upon this request being made the Appellant's Advocates were asked to leave the hearing room so that the Assistant Passport Officer (Policy) and Regional Passport Officer could privately deliberate and decide on what was to be done. As these turn of events was being unfortunate and startling the Appellant's Advocates contacted the office of the Appellant's Advocates and relayed this information to the office with a request that a letter recording the same be forthwith send. Accordingly a fax dated 15th November 2010 was immediately sent to the Assistant Passport Officer (Policy) recording the same. A copy of this communication is included in the Compilation under **Tab 15~~5~~7**.

p) After the Assistant Passport Officer (Policy) deliberated with the Regional Passport Officer, the hearing was resumed. The

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Appellant's Advocates reiterated their request that an order be passed on their objection but the same was not acceded to. Instead the Appellant's Advocates were asked to proceed with the hearing and were informed that an appropriate order would be passed in due course. The Appellant's Advocates were informed that it was the passport office, which was doing the adjudication, and both the Regional Passport Officer and the Assistant Passport Officer (Policy) were a part of the Passport Office and could therefore both participate in the adjudication. The Appellant's Advocates therefore pointed out that this new explanation that had been put forth to justify the presence and active participation of the Regional Passport Officer made matters more curious. What was being done was anathema and abhorrent to all known principles of fair adjudication. The adjudication was to be done by one person (the Assistant Passport Officer (Policy)) who had issued the communication dated 15th October 2010 and with whom all correspondence thereafter had been exchanged and not by a panel of two or more persons. The proceedings that were being conducted were not departmental administrative proceedings where all persons who formed a part of the Regional Passport Office in Mumbai could sit and collectively decide. These were quasi-judicial proceedings and the Assistant Passport Officer (Policy) was the adjudicator. In response thereto the Appellant's Advocates were informed that both the Assistant Passport Officer (Policy) and the Regional Passport Officer could adjudicate since they were notified under Rule 3 of the Passport Rules and Schedule 1 thereto. The Appellant's Advocates then pointed out

that even this assumption was erroneous. Powers under Section 10(3) of the Act could be exercised only the passport authority who was defined under Section 2(c) of the Act and Rule 3 of the rules. The passport authority under the Act and the Rules was an Officer and not an office and therefore there could not be a collective, which would sit and adjudicate. It was also pointed out that the construction placed upon the Act and the Rules by the two gentlemen present was absurd since there were a large number of officers who would fit the description given in the Rules and it would result in a complete absurdity if one or more or all of them could form a part of the adjudicatory panel.

q) Despite the aforesaid objections being taken the Assistant Passport Officer (Policy) and the Regional Passport Officer both refused to pass any order on the objections raised. The Regional Passport Officer continued to participate in the hearing and the Appellant's Advocates were asked to proceed with the hearing. Being left with no option, the Appellant's Advocates therefore argued the matter under protest.

r) On 19th November 2010, the Appellant's Advocates therefore recorded the aforesaid facts. In the said letter the Appellant's Advocates recorded that what had transpired on the previous day could not be considered as a personal hearing contemplated by law and the Rules of fairplay and justice. The Appellant's Advocates further recorded that it had become clear in the course of the personal hearing that the Passport Office had not been furnished by the entire records by the Enforcement Directorate, since the

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adjudicatory panel seem to be unavailable of the entirety of the correspondence exchanged between the Appellant/ Appellant's Advocates and the Enforcement Directorate. When this was pointed out and it was requested that the Enforcement Directorate be called and be present since this was an adjudicatory hearing involving a request made by the Enforcement Directorate the Appellant's Advocates were informed that this was not necessary and that if the passport office desired it would contact the Enforcement Directorate for clarification. The Appellant's Advocates in their letter dated 19th November 2010 therefore recorded that any attempt to contact the Enforcement Directorate whilst the hearing was in progress could only take place in the presence of the Appellant's Advocates and any attempt to do so behind their back would also violate the norms of fair play and natural justice. A copy of this communication is included in the Compilation under **Tab 168**.

s) The Appellant's Advocates had at the hearing dated 18th November 2010 requested that they be permitted to inspect the official files of the proceedings before the Assistant Passport Officer (Policy) because these proceedings were in the nature of a quasi-judicial inquiry and the Appellant was entitled to inspect the record. Furthermore, this inspection would establish what interaction taken place with the Enforcement Directorate. This request was orally declined. Accordingly, by the letter dated 22nd November 2010 the Appellant's Advocates recorded the same and requested that a copy of the decision rejecting the said request be made available. By the said letter the Appellant's Advocates also requested that

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they be supplied with the copy of the order sheet and the roznama of the proceedings before the Assistant Passport Officer (Policy). A copy of this communication dated 22nd November 2010 is included in the Compilation under **Tab 1~~7~~9**.

t) On 23rd November 2010, the Assistant Passport Officer (Policy) addressed a communication to the Appellant's Advocates, falsely recording that the Passport Office had given the Appellant sufficient time and ample opportunity to come forth with an explanation. The said communication recorded the fact that a number of reservations and objections had been raised about the proceedings of the personal hearing and the presence therein of the Regional Passport Officer. The letter recorded that the Appellant's Advocates had been advised during the hearing that the Passport Authority at Mumbai was headed by the Regional Passport Officer who could all upon any official or staff to assist him and also delegate the work to subordinate officials for the smooth functioning of his office. The letter falsely accused the Appellant's Advocates of raising procedural objections but not replying substantially to the matters raised in the show cause notice issued. This was clearly indicative of non-application of mind since the Appellant's Advocates had in fact filed an interim reply. By the said communication the Appellant's Advocates were informed that the final hearing would be conducted by the Regional Passport Officer on 26th November 2010 in his Chamber and the final written submissions of the Appellant, if any, would be accepted before or during the hearing. A copy of this communication is included in the Compilation under **Tab ~~18~~20**.

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u) The Appellant's Advocates took strong exception to the manner in which the Assistant Passport Officer (Policy) and the Regional Passport Officer were functioning, by addressing three communications all dated 26th November 2010. Copies of these communications are included in the Compilation under **Tab 2~~1~~9, 20~~2~~2** and **21~~3~~3**. In the first communication the Appellant's Advocates reiterated the request made earlier and at the time of the hearing on 18th November 2010 that:

> "*(i) we be provided with all the material supplied to you by the Enforcement Directorate: not a sanitized or censored version thereof;*
>
> *(ii) we be permitted to inspect your official file relating to the proceedings and supplied copies thereof;*
>
> *(iii) records of, inter alia, the Enforcement Directorate, be summoned;*
>
> *(iv) notice of the hearing be given to the Enforcement Directorate; and*
>
> *(v) in any event, at the very least these requests be decided and orders be passed thereon."*

The Appellant's Advocates recorded that it was a matter of regret that these requests had remained unanswered. The Appellant's Advocates reiterated that the request be acceded to before the hearing commences so that they could consider the position and advise the Appellant accordingly. The Appellant's Advocates in the said communication pointed out that considering the unusual manner in which the proceedings were being conducted and their request remained responded to, they be permitted to cross examine the concerned officer of the Enforcement Directorate, this was because the entire proceedings had been initiated at the

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instance of the Enforcement Directorate. The Passport Office had not acceded to the request that the Appellant's Advocates be supplied with the entirety of the material made available to the Passport Office by the Enforcement Directorate. Instead, a sanitized and/or censored extracts of two communications addressed by the Enforcement Directorate had been made available. The request that the Enforcement Directorate and / or its representative be called upon to attend the hearing had been denied; the Appellant and / or his Advocates were unaware of the case which they had to meet; the Enforcement Directorate had till date not issued a single show cause notice to the Appellant on merits; the Enforcement Directorate was yet to decide upon the show cause notice issued to the Appellant to explain his non-attendance; the Enforcement Directorate had not even discarded the Appellant's explanation for his non-attendance; despite this the present proceedings were being proceeded with hastily. Considering the totality of the above the Appellant was entitled to cross examine the concerned person from the Enforcement Directorate so that he can adequately respond to the allegations made by the Enforcement Directorate to the Passport Office (some part of which was in the private domain).

v) By the second letter of 26th November 2010, the Appellant referred to the fact that repeated requests made by the Appellant's Advocates, both in correspondence and at the time of the personal hearing, that they be served with the material supplied to and / or made available to the Passport Office, be provided to them and/or that they be permitted to inspect the relevant records available with

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the Enforcement Directorate and/or any other Department which the Passport Office may take into consideration, had all been ignored. This despite the settled legal position that the exercise of powers under Section 10(3) of the Act was a quasi-judicial function which required "*legal due process"* to be followed. A necessary concomitant of a legal due process was (i) compliance with principles of natural justice; (ii) fair, just and reasonable procedure; (iii) reasonableness and proportionality in the decision making process; (iv) due application of mind; (v) personal hearing; (vi) a decision made without any bias or predilection and unaffected by extraneous circumstances (and certainly not under dictation) and (vii) a speaking order with reasons. The Appellant's Advocates observed that there had been complete non-compliance with principles of natural justice. The material available with the Passport Office had not been made available to them. The facility of inspection had not been permitted. They had not been allowed to cross examine the Enforcement Directorate on whose complaint the communication dated 15th October 2010 had been issued and the Enforcement Directorate was not even being noticed in the personal hearing despite it being a party to the lis. The Appellant's Advocates pointed out that the sine qua non of the due process requirement was that a person must be supplied with the entirety of the material proposed to be used against him so that he knows exactly and precisely the same material that has been made available to the person discharging a quasi judicial function. In the present case, this material was deliberately denied to the Appellant whilst being made available to the adjudicating authority which fact

was bound to influence the adjudicating authority consciously or sub-consciously. The failure to suitably respond to the repeated requests of the Appellant therefore clearly vitiated the entire adjudicating process. Without prejudice to the above, the Appellant's Advocates submitted that the power under Section 10(3)(c) of the Act would only be exercised when upon facts established before the Passport Office it was found that either in the interest of sovereignty and integrity of India or in the interest and security of India or in the interest of friendly relations of India with any foreign country or in the interest of the general public and the Passport authority deems it **necessary** to impound and/or revoke the passport. The Appellant's Advocates submitted that in the present case, ex-facie there was nothing whatsoever to show that any of the preconditions required for exercise of jurisdiction under Section 10(3)(c) of the Act have been satisfied.

w) Without prejudice to the above it was submitted that the letter dated 15th October 2010 was fundamentally misconceived. The stated basis of the communication was that the Passport Office had been informed by the Enforcement Directorate that a complaint had been filed against the Appellant and that a show cause notice had been issued to him. It was submitted that this by itself, could never be the basis for considering whether proposed proceedings under Section 10(3) of the Act should be instituted against the Appellant or not. It was submitted that the power and jurisdiction under Section 10(3) of the Act, which had extremely serious consequences on the fundamental rights and personal liberty of a citizen could not be

used as a tool or a device to ensure compliance of the provisions of other statutory requirement. This was more particularly so because there were a large number of other remedies available in law for the Enforcement Directorate to ensure that the Appellant answered their questions. These included (i) questioning by a video link; (ii) sending a questionnaire and (ii) an overseas Commission.

x) Without prejudice to the above, it was submitted that the record clearly establishes that the concerns expressed by the Enforcement Directorate were factually misconceived. The Appellant had assured the Enforcement Directorate of all cooperation. The Appellant could never be said to have deliberately refused to respond to a summons. The Appellant had only expressed his inability to come before the Enforcement Directorate at Mumbai on account of serious and elevated threat perceptions to his life which threat perceptions was evident from the record. It was therefore clear that the Enforcement Directorate was not interested in the Appellant's answers to their questions but only in harassing and falsely portraying him as a person not cooperating and/or had something to conceal.

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y) Without prejudice to the above it was contended that the power to take up investigation in respect of any alleged contravention under section 13 of FEMA was provided under Section 37 of the FEMA. Section 37(3) empowered the officers of Enforcement Directorate to exercise like powers as available with authorities under the Income Tax Act. The Income Tax Act under section 131 vested the Income tax officers with powers to issue a Commission. Consequently, the

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Enforcement Directorate was empowered to issue a Commission under which the Appellant could be questioned in London. The Appellant had expressed his willingness to appear before the Commission in London. There were a large number of instances in the past where overseas Commissions have been issued. In these circumstances the refusal of the Enforcement Directorate to question the Appellant by any of the modes available to them and their insistence that he appear before them in Mumbai was clearly evident of *malafides*.

z) Without prejudice to the above the Appellant's Advocates recorded that the stand of the Enforcement Directorate was baffling to say the least. The Enforcement Directorate did not appear to be interested in finding answers, which would take the investigation forward but was merely interested in insisting on the Appellant remaining present in Mumbai. This casts serious doubts on the fairness of the entire exercise. It was further submitted that the Enforcement Directorate had itself gone on record to state that the alleged violations were under the provisions of FEMA. As stated above, FEMA violations were civil in nature and there was therefore no rule for custodial interrogation. The Enforcement Directorate could not therefore take the Appellant into custody apart from the fact that there was absolutely no warrant to do so. If the Enforcement Directorate required information from the Appellant, the Appellant was more than happy to provide the same to the Enforcement Directorate. The usefulness of the information depended on its content and not the citus where it was imparted.

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There was therefore no merit in the grievances made by the Enforcement Directorate.

aa) Without prejudice to the above, the Appellant's Advocates submitted that any adjudicating authority discharging powers under Section 10(3) of the Act was required to be independently satisfied about the request of the Enforcement Directorate and that the same was correct. This was a jurisdictional precondition to exercising powers under Section 10(3) of the Act. The Appellant's Advocates elaborately set out that there was no merit whatsoever in the allegations made by the Enforcement Directorate. The Appellant's Advocates, in the letter dated 26th November 2010, set out why the Appellant could not be said to be deliberately avoiding responding to the summons and remaining present before the Enforcement Directorate in Mumbai. A large number of communications exchanged between the Appellant and the Mumbai Police were particularly referred to. It is beyond the scope of the present appeal to independently advert to each of these communications. These have been extensively set out in the communications dated 26th November 2010, and the Appellant repeat, reiterate and confirm what is stated therein. The Appellant's Advocates further pointed out that in any event the communication dated 15th October 2010 was premature since the Enforcement Directorate itself was yet to decide on the show cause notice issued by it. The Enforcement Directorate had issued a show cause notice dated 20th September 2010. The Appellant, through his Advocates had responded to the show cause notice on October 12, 2010 ————————.

Despite a period of ~~_____~~ 7 months ~~("Note: Please confirm)~~ having elapsed the Enforcement Directorate had not taken any decision in the matter. Despite this Enforcement Directorate was goading the Passport Office to take action against the Appellant. What the Enforcement Directorate was therefore seeking to do was to make the provisions of the Act, an instrument of abuse.

bb) Without prejudice to the above, the Appellant's Advocates further submitted that there had been admittedly no allegation or show cause notice by the Enforcement Directorate alleging any substantive violation of the provisions of FEMA. In the absence of any such allegation coupled with a non-disclosure of a contravention with Section 13 of FEMA a summary and threshold rejection of the Enforcement Directorate's request was necessary.

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cc) Without prejudice to the above and in any event the Appellant had not committed any violation of FEMA. Although the communication dated 15th October 2010 referred to the Enforcement Directorate's complaint and/or show cause notice and the letter dated 1st November 2010, made some sweeping general and wide ranging allegations, there was absolutely no merit in them and there was no violation by the Appellant of any of the provisions of FEMA. In the absence of any specific allegation or instance being pointed out against the Appellant the Appellant was constrained to try and disprove a negative. Although not strictly required to do so, the Appellant's Advocates stated the following:

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(a) *"Insofar as the allegations pertinent to the BCCI are concerned, they are misconceived in their entirety and are false. These are being inquired into by a Disciplinary*

Committee of the BCCI. Our client is confident that this inquiry will vindicate him;

(b) *BCCI is a private body although it has to act fairly and is amenable to judicial review in writ jurisdiction, lis significant to note that no official or public funds are involved in the functioning of BCCI. The corpus of funds of BCCI are private monies;*

(c) *None of the allegations leveled against our client in respect of affairs of BCCI has anything to do with any foreign exchange violation. BCCI has leveled a set of allegations against our client. It is significant to note that none of the allegations even remotely suggest that our client has been responsible for any contravention of FEMA or has committed any foreign exchange violation while being an administrator in the BCCI. In this regard our client is submitting copies of the show cause notices and our client's replies thereto which are annexed hereto as Annexure 4;*

(d) *In almost all contracts of the BCCI, pertinent to IPL there has been an inward flow of foreign exchange: not the other way round. Thus when there has been income through foreign exchange, it cannot be said to be against the interest of nation or general public. Further, all of these contracts were signed or entered into by BCCI as an institution and were approved and ratified by Governing Council of IPL as well as General Body of BCCI. Those actions are in the nature of collective actions and undertaken by BCCI as a collective body and cannot be termed as an individual action of our client;*

(e) *In the few contracts where there was payment of foreign exchange out, these contracts were executed by the BCCI as a collective body and were ratified and approved by the*

President and Secretary and the Governing Council of IPL and General Body of BCCI. No notice or summon appears to have been issued against the BCCI or its functionaries in respect of the funds of the BCCI, that too in respect of transactions which the BCCI, as a body, affirmed and executed. The concern for investigation of contravention of foreign exchange from our client alone does not therefore appear to be genuine;

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(f) It would not be out of place to mention here that our client was NOT in any manner ever involved in any monetary transactions concerning BCCI or IPL. He did not have any authority in respect of Bank Accounts of BCCI or their operations or in respect of withdrawal or payment of any amount from them even domestically what to speak of foreign exchange;

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(g) That the Directorate of Enforcement even as per the contents of your letter dated 01.11.2010 has not pointed out as to what specifically is the alleged contravention under FEMA committed by our client;

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(h) That the Directorate of Enforcement even as per the contents of your letter dated 01.11.2010 has vaguely alleged that our client had committed gross irregularity in conducting IPL Tournament and in award of various contracts. No description of what these irregularities has been provided. Our client submits that no irregularity was committed by him. As stated hereinabove these have been subject matter of BCCI inquiries but even in those inquiries, there is no allegation whatsoever of any foreign exchange violation. Therefore these vague and unsubstantiated allegations have to be only noted to be rejected;

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(i) It has not been pointed out by any evidence/ material before you as to how and in what manner contravention of FEMA to the extent of hundreds of crores as alleged by

Enforcement Directorate has taken place. All such allegations are completely false, frivolous and denied. We submit that in absence of material before you to justify such allegations and further thereupon us being given a chance to rebut the same, the said allegation deserves to be out rightly rejected;

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(j) It is also not clear as to on what basis, it is alleged that our client has acquire huge amount suspected to have been parked outside India. Our client vehemently denies all such allegations. No material to establishments such an allegation has been placed by Enforcement Directorate on record. Without this and us being given a chance to rebut the same, the said allegation deserves to be out rightly rejected;

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(k) It is further apparent from your letter dated 01.11.2010 that the only specific allegation of having committed irregularities is stated to be in respect of second addition of Indian Premier League held in South Africa in 2009. It is submitted that the said Tournament was conducted in South Africa in April-May, 2009. The said tournament was widely telecasted in India and entire affairs regarding the same were in public domain and knowledge. In respect of the South Africa Tournament the circumstances in which the allegation at this stage after over an year is being leveled indicates that the said allegation is merely an afterthought to unduly harass our client and in the nature of witch hunt. It is further submitted that our client as Commissioner, IPL was only dealing with organizational and administrative issues, but as submitted hereinbefore had no financial or monitory powers and was not in any way involved for any foreign exchange transactions;

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(l) The decision to shift the IPL Season 2 to South Africa was a BCCI Working Committee decision and not a decision of our client; Copy of the relevant resolution of the Working

Committee of BCCI is annexed hereto as Annexure-5. The Working Committee of BCCI headed by the President of BCCI Shri Shashank Manohar on 22nd March 2009. There was an agreement dated 30.03.2009 between BCCI and Cricket South Africa (CSA) for conducting the tournament in South Africa, a copy of which is annexed hereto and marked as Annexure 6. This agreement was entered on behalf of BCCI by the Secretary of BCCI Shri N. Srinivasan. In terms of that agreement money was transferred by BCCI to CSA by the Treasurer BCCI Shri M. P. Pandov with the approval of the Secretary BCCI. Shri N. Srinivasan and Shri M. P. Pandov had traveled to South Africa around 25th March 2009 to sign these agreements; open bank accounts; and transfer necessary funds. In these matters our client was not even involved and was not even present when the agreement between BCCI and CSA was signed. Our client was only in South Africa to execute the mandate of Working Committee of BCCI for conducting the tournament. He was not involved in any foreign exchange transfer or operation of any bank account or sanction/disbursement of any funds in respect of any contract entered in South Africa by the BCCI. The entire budget for shifting IPL to South Africa was approved by Shri N. Srinivasan, the Secretary of BCCI upon which the Treasurer of BCCI Shri M. P. Pandov released the payment. In fact, there is a lot of contemporaneous material, which clearly shows that payments under the South African contracts ere all approved by Shri N. Srinivasan. With regards to the payments, the person who was handing the finances/payments on ground was Mr.Prasanna Kannan (the Chief Financial Officer of IPL) who is also an employee of India Cement Ltd. whose promoter is again Shri N. Srinivasan. Further the financial advisor of BCCI who was looking after these affairs was Mr.P.B. Srinivasan, internal auditor of BCCI who is also an employee of India Cement Ltd. Thus our client had no role

to play at all in any payments whatsoever made or sanctioned for South African tournament. All the contracts entered in respect of shifting of IPL-2 to South Africa were approved by the President BCCI and were ratified by Governing Council of IPL in its meeting dated 11th August 2009. Thus the decision in respect of shifting IPL tournament to South Africa was clearly a BCCI collective decision;

(m) Our client did not make remittance of funds in respect of expenses incurred in South Africa. Our client had no power to do so. It is reiterated that our client had no power relating to money forex transfer or operation of any bank account either of BCCI or in South Africa. All operations of Bank account and transfers and payments were remitted and approved for remittance by the Secretary and Treasurer of the BCCI. All contracts that were entered with authorization of President BCCI and subsequently approved by Governing Council of BCCI. No action appears to have been taken against the President, the Secretary or the Treasurer of the BCCI. This itself shows that the issue of IPL-2 tournament in South Africa is merely a bogey being raised by Enforcement Directorate who themselves have no serious intention of investigating/adjudicating it;

~~*(m)*~~

(n) Our clients submits that each and every head of expenditure in South Africa was approved personally by Shri N. Srinivasan in which our client was merely copied on various emails only by way of information. In this regard our client is annexing various emails sent by N. Srinivasan, which were copied to our client. These emails dated 25th March 2009, 4th April 2009, 9th April 2009, 10th April 2009 and 25th April 2009 clearly show that all financial issues were being dealt with by Shri N. Srinivasan and his team.

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*Copies of these emails are annexed as **Annexure 7 collective.***

~~(n)~~

(o) *At the time of the personal hearing our client will endeavour to produce detailed material in this behalf – bills; bank statements etc;*

~~(o)~~

(p) *It is submitted that to the best of the knowledge of our client no notice by Enforcement Directorate has been issued either to the BCCI as a body, nor to the Secretary BCCI, Treasurer BCCI or President BCCI. This itself shows that the entire exercise by Enforcement Directorate is in fact with ulterior motives and is merely a witch hunt and smacks of malice;*

~~(p)~~

(q) *That the only other contracts, to the best of knowledge of our client, where foreign exchange outflow outgoing was involved were contracts with foreign players entered into by BCCI who had to be taken in a pool so that the Franchisees forming part of the league can bid for them and create their own team. It is pertinent to point out that the decision to take foreign players in the pool was a BCCI institutional decision so that thebest players in the world could be a part of Indian Premier League. In September/ October 2007, the Governing Council of IPL took a decision that players may be contracted to be part of Indian Premier League;*

~~(q)~~

(r) *All correspondence with players and other agents were handled by the then Treasurer of BCCI Shri N. Srinivasan. The agreements with the players were drafted by BCCI Corporate Lawyer namely, IMG. This entire system was put in place by resolutions passed on collective basis by BCCI. Copy of such resolution are annexed as **Annexure 8 (collectively);***

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(s) *The price at which players were contracted were sanctioned by the then Treasurer Shri N. Srinivasan. All payments made to the players was also made by the Treasurer BCCI;*

~~(s)~~

(t) *When the players auction took place 8 Franchisees of IPL made bids for most of the players in the pool and contracted them and therefore BCCI was ultimately not put to any liability to pay most of these players. Only some of the players who could not taken up by Franchisees were paid for by BCCI. The fraction of payments made by BCCI to foreign players was less than 1% of the payments made by the Franchisees to the foreign players purchased by them;*

~~(t)~~

(u) *It is submitted that both in the case of South Africa contracts and player contracts, it was the job of the Treasurer and the Secretary who controlled the financial matters to obtain all regulatory approvals including from RBI. All payments were made by Board and cheques were signed by the Treasurer after approval from the Secretary and it was their responsibility to obtain all regulatory approvals in respect of foreign exchange. It is submitted that our client has nothing to do at all with operation of Bank accounts or transfer of monies. He was not at all entrusted with obtaining any approval of any regulatory agency as it as the job and responsibility of the Treasurer and the BCCI;*

~~(u)~~

(v) *There is no FEMA element involved in the payment of the Facilitation Fee by MSM Singapore Pte to WSG Mauritius. It is an admitted position that both are foreign companies and the remittance was done abroad. The transaction was an offshore transaction between two off shore entities;*

~~(v)~~

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(w) There is no foreign exchange violation in respect of the allegations about Rajasthan Royals and Kings XI Punjab. In the case of Rajasthan Royals, there is merely an allegation of a technical breach in not having permissions in place at the time of remittance of funds into India. Hence there is no outflow of funds involved;"

dd) Without prejudice to the above, in the communications dated 26th November 2010, the Appellant's Advocates set out in detail the correspondence exchanged with the Mumbai Police Department and forwarded to the Passport Office copies of the said communications. The Appellant's Advocates also forwarded to the Passport Office the communication exchanged between the Appellant and the Enforcement Directorate.

ee) On 26th November 2010, a personal hearing took place before the Respondent. In the course of the personal hearing the Appellant reiterated what had been submitted above and was in the process of taking the Respondent through the various legal provisions in this behalf. The Appellant also cited material, which established that the security threat to the Appellant's life was a genuine threat and that there was serious and credible material to substantiate the same. The submissions that were made in the course of the said hearing have been set out by the Appellant's Advocates in their letter dated 6th December 2010. A copy of this communication dated 6th December 2010, is included in the Compilation under **Tab 224**.

ff) The Appellant's Advocates could not complete their arguments before the Respondent on account of paucity of time and therefore

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requested that the hearing be continued on a future date. The Appellant's Advocates briefly indicated the material and/or content, which remained to be argued before the Respondent and sought for a further date of hearing. This request was rejected and the Respondent halted proceedings as a result of which the Appellant and/or his Advocates were not in a position to complete the submissions on a host of other issues. The manner in which the hearing was halted has been expressly recorded in paragraphs 31 and 32 of the letter dated 6th December 2010.

gg) The fact that no prejudice whatsoever would have been caused had the Appellant's Advocates been given a further date of hearing is clearly evident from the fact that despite the personal hearing having been halted on 26th November 2010, no decision was passed till 3rd March 2011 when the Impugned Order was passed. In fact, on 10th December 2010, the Respondent addressed a communication to the Appellant's Advocates, stating that no further hearing would be granted as sufficient time had been granted for personal hearing. A copy of this communication is included in the Compilation under **Tab 2~~3~~5**.

hh) On 4th March 2011, the Appellant's Advocates were served with a copy of the Impugned Order. A copy of the Impugned Order is included in the Compilation under **Tab 264**.

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~~6.~~7. The Appellant submits that the Impugned Order is ex-facie illegal, null and void, contrary to law, contrary to statute, perverse, indicates non-application of mind, malafide, has been passed for extraneous reasons

and/or consideration and is null and void. Almost all the submissions made by the Appellant and his Advocates have been ignored and the order is in blatant disregard of the provisions of the Act and the Rules and is in complete violation of established principles of natural justice. Herein below set out are reasons for the same.

GROUNDS

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(A) The Impugned Order is ex-facie without jurisdiction. The Impugned Order has been passed in the exercise of jurisdiction and powers under Section 10(3)(c) of the Act. It is respectfully submitted that Section 10(3)(c) of the Act has no application whatsoever to the present case. The present case does not involve anything which affects or offends “interest of the sovereignty and integrity of India”; “the security of India”; “friendly relations of India with any foreign country”; and “in the interest of general public”. The assumption of jurisdiction by the Respondent was therefore, plainly illegal and the exercise of powers by the Respondent was ex-facie, without jurisdiction and the authority of law. The Impugned Order is therefore ex-facie, without jurisdiction, illegal and null and void ab inito. The same is a nullity in the eyes of law.

(B) The Impugned Order seeks to justify the action of revocation of the Appellant’s passport on the ground *“in the interest of the general public”*. It is respectfully submitted that there is nothing, in the facts of the present case and/or in the findings in the Impugned Order, which can even remotely be described as justifying the revocation of the Appellant’s passport as being, in the interest of the general public. The

view taken by the Respondent is plainly perverse and an impossible view.

(C) The impugned judgment is contrary to settled law laid down by the Hon'ble Supreme Court of India and several High Courts, which have interpreted the scope and ambit of the expression *"in the interest of the general public"*. The expression *"in the interest of the general public"* has been judicially considered and interpreted in a large number of judicial pronouncement, including .....

(D) The fundamental basis of the impugned judgment is erroneous and misconceived. The proceedings leading to the passing of the Impugned Order were commenced by a communication dated 15th October 2010. This communication, forms the foundation and the genesis of the action which culminated in the passing of the Impugned Order. The allegation made in the communication dated 15th October 2010 was that :

i. the Enforcement Directorate had informed the Passport Authorities that the complaint dated 16th September, 2010, under Section 13 of the FEMA had been filed against the Appellant and

ii. the show cause notice dated 20th September, 2010, alleging non compliance of the summons issued by the Enforcement Directorate, had been issued to the Appellant.

On this limited basis, the Appellant was called upon to explain why action under Section 10(3)(c) of the Act should not be initiated against him. The complaint and the show cause notice issued by the Enforcement Directorate was, therefore, the only basis for seeking to exercise of jurisdiction under Section 10(3)(c) of the Act. A bare perusal of the complaint and the show cause notice issued by the

Enforcement Directorate clearly indicates that the Appellant had been, thereby, called upon to explain whether his failure to appear before the officials of the Enforcement Directorate, pursuant to summons issued by them, could be said to be deliberate and/or willful. Inherent therein was the fact that there was still to be a determination of the issue of whether the failure of the Appellant to appear before the Enforcement Directorate, pursuant to their summons, was willful or deliberate. It is respectfully submitted that the jurisdiction under Section 10(3)(c) of the Act cannot be exercised, let alone a citizen's passport revoked, merely because a show cause notice has been issued by an Investigating Agency, seeking an explanation from a citizen on whether his failure to attend pursuant to a summons, can be regarded as willful or deliberate.

(E) The Respondent, whilst passing the Impugned Order and purporting to assume and/or exercise jurisdiction under section 10(3)(c) of the Act, has completely failed to appreciate that the central issue (and jurisdictional precondition) on which the present proceedings have been founded was yet to be decided by the officials of the Enforcement Directorate. The Appellant had responded to the show cause notice issued by the Enforcement Directorate through his Advocate. In the said response, the Appellant had explained, in detail and with supporting documents and/or records why his failure to attempt in response to the summons issued by the Enforcement Directorate could not be regarded as willful or deliberate. The Enforcement Directorate had not found this explanation unsatisfactory. The Enforcement Directorate had not rejected the explanation offered by the Appellant. The Enforcement Directorate had not even decided the show cause

notice issued by it to the Appellant. In this view of the matter, the least that could be said was that the issue of whether the Appellant had deliberately and/or willfully refused to comply with the summons issued by the Enforcement Directorate, was still at large and remained to be decided. The primary agency and/or authority, which were required to decide this, was the Enforcement Directorate itself. As the Enforcement Directorate was yet to decide on this, it was completely illegal, wholly impermissible and against all known principles of fairness and justice, for the Respondent to assume and exercise jurisdiction under Section 10(3)(c) of the Act and revoke the Appellant's passport.

(F) If the Impugned Order is not set aside, serious and startling consequences will follow, occasioning great miscarriage of justice. In all cases where a mere show cause notice has been issued to a citizen calling upon him to explain whether the failure to response to a summons was willful or deliberate, the Authorities under the Passports Act, could even before the Authority / Agency issuing the show cause notice had adjudicated thereupon, exercised jurisdiction to revoke a citizen's passport. Such a scenario would be abhorrent to the rule of law and could never be described as to "due process".

(G) The complete absurdity of the impugned action will be underscored by simple illustration. It is possible that the Enforcement Directorate, which had issued the show cause notice to the Appellant and which was deliberating upon the Appellant's response thereto, could be satisfied by the explanation offered by the Appellant and accept the said explanation and not to take any action pursuant to the show cause notice issued to him. Despite this, the Respondent, in the interregnum,

would have revoked the Appellant's passport, without even waiting for the proceedings initiated by the Enforcement Directorate to conclude.

(H) Without prejudice to the above and the Appellant's contention that the Respondent had no jurisdiction to exercise powers under Section 10(3)(c) of the Act, it is respectfully submitted, that at the very least the assumption of jurisdiction by the Respondent, was premature. The Respondent, at the very least, ought to have awaited the decision of the Enforcement Directorate on the show cause notice issued by them, to which the Appellant had duly responded and show cause. The manner, in which the Respondent has proceeded, despite the Enforcement Directorate not having decided on the said show cause notice, is clearly reflective of the perversity of the actions of the Respondent.

(I) The Impugned Order does not even consider the aforesaid submissions, which were made, both in the replies / responses filed by the Appellant's Advocates and reiterated at the time of the personal hearing. It is respectfully submitted that the failure of the Respondent, to deal with (or even properly note), in the Impugned Order, the submissions made by the Appellant's Advocates, in this behalf, clearly establishes that the Impugned Order has been passed with a predetermined mind and under the dictation of others. It is respectfully submitted that it is solely because of this, that the Respondent has adopted what can be termed as an ostrich life attitude of simply ignoring arguments made by the Appellant's Advocates, to which there was no legal answer. Without prejudice to the above and in the alternative, it is respectfully submitted that, at the very least, this indicates total non-application of mind. That such an approach has

been adopted by a statutory functionary discharging draconian powers under Section 10(3)(c) of the Act and purporting to revoke a citizen's passport, as more particularly set out below, is shocking to say the least. There is a patent irregularity in the exercise of powers is manifest from the face of the records.

(J) The Respondent has failed to appreciate and/or deliberately ignored the fact that what the Respondent has done is not only to illegally assume jurisdiction and powers under Section 10(3)(c) of the Act; but to act as an Adjudicating Officer under the provisions of the FEMA. Such a course of action is unknown to any civilized system of law and/or jurisprudence. The Respondent ought to have appreciated that his powers were circumscribed by the Act and the Respondent could not enter upon any enquiry or render any decision on whether the refusal or the failure of the Appellant, pursuant to the summons issued by the Enforcement Directorate, was willful or deliberate. This was clearly within the domain of the Enforcement Directorate and the fact, which the Adjudicating Authority under the FEMA was seized off. A reading of the Impugned Order, clearly indicates that the Respondent has decided this issue. Not only has the Respondent decided that there was no genuine need or no justifiable reason for the Appellant absenting himself, but proceeded to conclude that the grounds raised by the Appellant in response to the show cause notice issued to him by the Enforcement Directorate were *"hollow"*. It is respectfully submitted that this tantamounts to the Respondent exercising jurisdiction not vested in him; acting beyond jurisdiction. This completely vitiates the Impugned Order, which, in the eyes of law is a nullity.

(K) It is respectfully submitted that the manner in which the Respondent has acted can only be described as unfortunate. The entire action of the Respondent, clearly indicates a predetermined mind and *malafides* are apparent from the face of the record and on a plain reading of the Impugned Order. It is respectfully submitted that not only should the Impugned Order be set aside on this ground forthwith, strictures are required to be passed against the Respondent for having acted in the manner done.

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(L) Without prejudice to the above and the primary submission that the Respondent could not have entered upon any enquiry into whether the failure of the Appellant to appear in response to the summons issued by the Enforcement Directorate, it is respectfully submitted that in any event the finding of the Respondent that the Appellant deliberately absented himself from appearing before the Enforcement Directorate and the related findings given in this behalf are all unsustainable and perverse. The Respondent has firstly erroneously concluded that the Appellant willfully and/or deliberately absented himself from appearing before the Enforcement Directorate. Whilst arriving at this finding, the Respondent has completely ignored the overwhelming material on record, which clearly established that there was a serious risk to the Appellant's life and elevated threat perceptions insofar as the Appellant is concerned. The Appellant's Advocates had in the replies filed by them extensively adverted to cogent and unimpeachable material which establishes the existence of such a threat and/or threat perception. The entirety of this material has been summarily disregarded by the Respondent and that too without affording any reasons for doing so. On this ground alone, the findings in the

Impugned Order must fail and the Impugned Order is required to be set aside. The manner, in which the entirety of the material has been ignored, is also indicative of malafides and the fact that the Respondent was acting with a predetermined agenda and on the dictation of others. Without prejudice to the above and in any event, this indicates complete and total non-application of mind.

(M) In any event, it is respectfully submitted that the Passport Officer, exercising powers under the Act, cannot abrogate to himself, the jurisdiction of deciding of whether an elevated threat perception and/or threat to life existed or not. This could only be determined by the Police Agencies. The Appellant's Advocates had, during the course of the hearing, placed on record material, which established that the Police Authorities themselves considered that there existed a serious risk to the life of the appellant. In addition to placing this material on record, the Appellant's Advocates had, in their communications to the Respondent / Passport Office / Assistant Passport Officer (Policy) repeatedly requested that the existence of such a threat and/or risk could be ascertained from the concerned agencies (Enforcement Directorate and/or Mumbai Police) and that, therefore, these agencies be involved and/or their views sought. The Respondent was requested to call for the records of these agencies. The Respondent was requested to request them to depute a representative for a personal hearing. These requests were ignored. Worse, the fact that such requests were made has also not been stated in the Impugned Order. It is respectfully submitted that the only reason for the Respondent to have acted as he did in the present case was that the Respondent had predetermined that the passport of the Appellant was to be revoked,

and the Respondent was, therefore, not desirous of taking any steps, which would establish facts contrary to what his predetermined agenda was.

(N) Even more surprising is the finding in the Impugned Order that the Appellant was deliberately absenting himself from the authorities in order to scuttle / hamper the investigation by the Enforcement Directorate. It is respectfully submitted that such a finding is not only unsustainable but is perverse. Such a finding is also clearly demonstrative of malafides.

(O) It is a matter of record and an admitted position, that the Enforcement Directorate had, in its communications, not accused the Appellant of absenting himself in order to scuttle or hamper investigations being carried out by them. Notwithstanding the same, the Respondent has proceeded to give findings, which even the Enforcement Directorate had not alleged in the show cause notice to the Appellant.

(P) The finding, in the Impugned Order that the Appellant was absenting himself in order to scuttle / hamper the investigations, is equally unsustainable. It deliberately ignores almost all the submissions made by the Appellant's Advocates both in writing and at the time of personal hearing. The Appellant's Advocates had in their communications to the Respondent and during the course of the personal hearing, completely demolished any suggestion that the Appellant was seeking to scuttle and/or hamper the investigations. The record clearly demonstrated that the Appellant had, at every available opportunity, offered to fully cooperate with the Enforcement Directorate. More particularly, the Appellant had offered to submit a written response to any requisitions submitted to him by the Enforcement Directorate; answer questions put

to him by the Enforcement Directorate by video link; and had even agreed to appear before the officials of the Enforcement Directorate, in London. To show his *bona fides*, the Appellant had even offered to make arrangements for the travel and stay of the officials of the Enforcement Directorate to London. In the face of such material on record, the finding in the Impugned Order that the Appellant had not personally remained present, in an attempt to scuttle or hamper investigations, defies logic, sense and is in manifest disregard of the facts on record.

(Q) The Impugned Order adverts to "loss of foreign exchange running into hundreds of crores". It is respectfully submitted that this is yet another indication of the fact that the Impugned Order has been passed, on the dictation of others and with a predetermined mind. In the first instance, there was no material whatsoever on record to draw any inference of any loss of foreign exchange. The show cause notice did not make any allegations about this and the Appellant was not called upon to meet the same. Notwithstanding this, the Appellant had, in his replies filed by his Advocates adverted to the fact that there had been no loss of foreign exchange, let alone running into hundreds of crores, insofar as the Appellant was concerned. Even the BCCI has not so alleged. In light thereof, for the Respondent to have adverted to "loss of foreign exchange running into hundreds of crores" was highly improper and an irregular and improper exercise of jurisdiction. What makes this even more gross is the fact that the Respondent has conveniently, in the Impugned Order avoided deciding issues where the findings could only be in the Appellant's favour, by observing that the Passport Office was not conferred with the jurisdiction to sit in the judgment in some other

matters and issues and could not, therefore, act beyond the scope of its jurisdiction. Not only is the Impugned Order, therefore, without jurisdiction and/or manifest and irregular and/or improper exercise of jurisdiction, but the findings of the Respondent are unsustainable and/or perverse and/or indicate complete or total non application of mind.

(R) The finding in the Impugned Order that the reasons given by the Appellant for not presenting himself and the grounds raised in this behalf were hollow and not deterrent enough to prevent his presence, are ex facie erroneous. They ignored (if not deliberately overlooked) the entire material produced by the Appellant, which included correspondence with the Mumbai Police Authority. The Impugned Order does not deal with this material at all. The finding that the Appellant had absented himself without justifiable reason is therefore even, on merits, unsustainable. It is beyond the scope of the present Appeal to individually advert to each of the communications, to establish the elevated threat perception and the serious danger to the life of the Appellant. The Appellant's Advocates shall do so at the time of the personal hearing. The Appellant however, wishes to point out that extensive reference was made to this threat perception in the reply dated 26th November, 2010 addressed by the Appellant's Advocates. Paragraph 16 of this reply sets out in minute detail clear and cogent material to show that the elevated threat perception was real and serious and not imaginary or exaggerated. Along with the reply, the Appellant had filed a compilation of documents which reaffirmed this risk. The Impugned Order, however, completely ignores the entirety of this material. It does not even note, let alone deal with or discuss the

same. In light thereof, the finding that the Appellant was deliberately absenting himself and the security concerns raised by him were hollow and unjustified is unsustainable. Equally unsustainable is the finding that *"no evidence has been placed on record that the security threat perception to Shri Lalit Kumar Modi has increased since the time the first summons had been issued by the Directorate of Enforcement".* The material placed by the Appellant on record (which the Respondent has completely ignored) clearly establishes the content.

(S) The Impugned Order completely ignores the arguments of the Appellant (made in the replies filed by the Appellant's Advocates and reiterated at the time of personal hearing) that admittedly the Enforcement Directorate was enquiring into alleged violations of the FEMA. It is an admitted position that FEMA is a statute, whose violation involves civil consequences. In FEMA there is no scope for custodial interrogation and hence the insistence that the Appellant appear before the Enforcement Directorate in Mumbai was completely unnecessary and/or misconceived. If the Enforcement Directorate had any questions which they wished to put to the Appellant and/or any information which they require from the Appellant, this could have been obtained by considering the various options suggested by the Appellant. The Enforcement Directorate had the power to issue a commission for questioning the Appellant and the Appellant had clearly indicated his willingness to appear before the officials of the Enforcement Directorate in London and had even offered to make arrangements for their stay and travel.

(T) The Impugned Order completely ignores this argument. It is respectfully submitted that this was deliberate.

(U) Without prejudice to the above and in any event, it is respectfully submitted that the Impugned Order fails to take note of yet another important fact which was repeatedly stated in the replies submitted by the Appellant and reiterated at the time of the personal hearing viz., that the Enforcement Directorate had not issued any show cause notice even alleging any substantive violation of the provisions of FEMA. The show cause notice issued by the Enforcement Directorate was not a substantive show cause notice alleging violation of any substantive provision of FEMA but a notice which called upon the Appellant to explain whether his failure to appear before the officials of the Enforcement Directorate in Mumbai, pursuant to a summons issued to him, was deliberate and/or willful. It was therefore not even the case of the Enforcement Directorate that the Appellant had committed any substantive violation of the provisions of FEMA. When the Enforcement Directorate (which is the agency concerned with the enforcement of FEMA) had not even made such allegations against the Appellant, the fact that the Respondent has proceeded to give findings on the same, is clearly indicative of *mala fides* and complete and total non application of mind.

(V) The Impugned Order, in terms, prescribes the stated basis for revoking the passport of the appellant as *"necessary action to be taken to induce the presence of the appellant"*. It is respectfully submitted that this is plainly illegal and misconceived. This is also ex facie without jurisdiction and null and void. The powers under Section 10(3) of the Act are extreme in nature and involve a serious curtailment of the personal liberty, constitutionally guaranteed fundamental rights and freedom of a citizen. The power to revoke a passport cannot be

exercised to induce the presence of a citizen, pursuant to a summons issued by another authority or agent. This is all the more so, when the concerned authority has yet to determine whether the failure to remain present pursuant to a summons was deliberate or willful or could be justified and/or explained. This is also more particularly the case since FEMA is a statute, which involves civil consequences, there is no power of custodial interrogation conferred upon the authorities under FEMA; and the authorities under FEMA are more than equipped to deal with the consequences of non-attendance of a person pursuant to a summons issued under FEMA.

(W) The Impugned Order contains a finding that the insistence of the Enforcement Directorate that the Appellant present himself before the Enforcement Directorate at Mumbai was not high handed or mala fide. It is respectfully submitted that this finding is plainly erroneous for more than one reason. Firstly, it was jurisdictionally not open for the Respondent to have rendered any such finding. The question of whether the insistence by the Enforcement Directorate official that the Appellant attend the office of the Enforcement Directorate at Mumbai, notwithstanding the serious security concerns and the threat to his life, was a question which was to be decided by the Enforcement Directorate itself. This question was expressly open and in issue, as a part of the adjudicatory process before the adjudicatory authority under FEMA. It was wholly improper on the part of the respondent to have taken upon himself the role of adjudicating upon an issue, which was being considered by an adjudicating authority under FEMA. The jurisdiction under Section 19 (3) of the Act does not and cannot extend

to adjudicating upon matters under FEMA, more so, when an adjudicatory body, constituted under FEMA, is already considering the same. In doing so, the Respondent has patently and clearly travelled beyond his jurisdiction. Secondly, the Respondent ought to have at the very least awaited the decision of the adjudicating authority under FEMA. By entering into the fray and adjudicating upon a matter which was in the exclusive domain of the Enforcement Directorate, the Respondent has not only interfered with an adjudication process under FEMA but has sought to foreclose the same. What makes it even more irregular and/or improper is the fact that the respondent has done so without even inviting the Enforcement Directorate (which was a party to the list before the respondent) for a hearing. Thirdly, the enthusiasm which the Respondent has exhibited in acting in the manner done, can lead to only one conclusion viz. that the proceedings before the Respondent were clearly actuated by *mala fides* and on the dictation of others. Lastly, and in any event, the finding that the insistence by the Enforcement Directorate that the Appellant be personally present before the Enforcement Directorate was *"not high handed and mala fide"* is also wholly erroneous and contrary to the record. The record clearly establishes that the Enforcement Directorate was not interested in obtaining any answers or information, which would assist it in its inquiry. The Enforcement Directorate was merely interested in harassing and/or victimizing the Appellant. The Enforcement Directorate was not interested in carrying out any inquiry. Had there been any genuine desire to ascertain facts, the Enforcement Directorate would have accepted any of the suggestions put forth by the appellant viz. (1) submitted a written questionnaire to the

appellant; or (2) questioned the appellant by video conferencing; or (3) personally questioned the appellant in London (the appellant having undertaken to make arrangement for the travel and stay for the officers of the Enforcement Directorate. That the offer made by the Appellant, as stated above, had not even been responded to by the Enforcement Directorate, clearly shows that the Enforcement Directorate was not interested in any information which the Appellant was more than willing to offer and which would have assisted in the so-called investigation/inquiry being carried out by the Enforcement Directorate. It is absolutely clear that the Enforcement Directorate was only interested in ensuring the presence of the Appellant in India for extraneous reasons. An investigating agency, which desires to ascertain facts, is primarily concerned with the information, which it seeks, and not the mode by which the information is made available. The refusal of the Enforcement Directorate to accept any of the suggestions of the Appellant is even more bewildering considering the fact that (i) there were a large number of previous instances where enforcement agencies (including the Enforcement Directorate) had availed of the above options, including sending an overseas commission; in the present case the request made by the Appellant had not even been responded to; and (ii) the Income tax Department / Enforcement Directorate had internally obtained an opinion from the Government / Law Ministry which had opined that an overseas commission be issued to question the appellant. In this background the failure of the Enforcement Directorate to seek the information offered by the appellant, was clearly indicative of mala fides. It is absolutely clear that the Enforcement Directorate and the Respondent, under the

dictates of a higher up, were acting in tandem. What could not be lawfully done directly by the Enforcement Directorate, was being sought to be unlawfully done through the Respondent, in the purported exercise of powers under Section 10(3) of the Act. The finding of the Respondent that the request of the Enforcement Directorate that the Appellant present himself before at Mumbai was *"not high handed and mala fide"* is totally erroneous and unsustainable. The said finding is in manifest disregard of the material on record. The Appellant had placed before the respondent the correspondence exchanged between the Appellant and the Mumbai Police; the fact that the Mumbai Police had accepted that there was a serious security risk to the life of the Appellant; that there were incontrovertible and credible intelligence inputs available from State Intelligent agencies that an attempt would be made on the life of the Appellant by the underworld, that there was credible information that a hit on the appellant was in fact attempted but the Appellant providentially escaped such an attempt on account of a fortuitous change in his travel plans; that the Appellant had been in correspondence with the Mumbai Police seeking their assistance for automatic weapons, bullet proof cars, enhanced security; that post the IPL the security cover provided to the Appellant (which ought to have been enhanced) was in fact drastically reduced and/or withdrawn; that the Appellant had engaged private security for himself; that a globally renowned security agency had submitted a report adverting to the serious security concerns that the Appellant would be exposed to, whilst in Mumbai and recommending that the Appellant should remain in London; that it was a combination of these factors that compelled the Appellant to leave the country and remove his son from a school in

Mumbai and seek admission in London. The Impugned Order ignores the entirety of this material whilst describing the Appellant's legitimate concerns as *"hollow" and/or not deterrent enough"*. It is respectfully submitted that it is very simple for an adjudicating authority to comment upon the security concerns of a third party. That the genuineness of the Appellant's concern has now been established by a communication dated February 9, 2011 issued by the Mumbai Police, pursuant to an order passed by the appellate authority under the Right to Information Act.

(X) The perversity of the Impugned Order and the finding therein that the Appellant's security concerns were hollow and that these concerns were not a deterrent, is exemplified by the manner in which the Respondent has acted. It would be trite to say that an adjudicating officer under the Passports Act is not an expert on security concern. Any adjudicating officer, acting bona fide, would therefore seek to ascertain the factual position about the security concerns, from the concerned investigating Agencies / Enforcement Agencies. In the present case, the Appellant and/or its Advocates had repeatedly requested that the respondent ascertain the correct position from the Mumbai Police and/or call for information and/or records from the Mumbai Police. Whilst the information pertaining to the threat to the Appellant's life would not be made available to the Appellant (being classified information), the Mumbai Police would certainly share the same with the Respondent. The Respondent was therefore requested to ascertain this information from the Mumbai Police and/or call for the records of the Mumbai Police in this behalf. Despite this request being

made, the Respondent did not make any effort to ascertain these facts. It is respectfully submitted that the reason for not calling for the records and/or ascertaining these facts is obvious; the Respondent was cognizant that such facts if ascertained and/or such record, if called for, would establish the correctness of the Appellant's submissions. As such information and/or records would prove to be inconvenient, the same was not called for. *Mala fides* are therefore apparent on the face of the record. The inexorable conclusion that flows from the manner in which the Respondent has acted in the discharge of a quasi-judicial function is that the Respondent was acting under dictation and had been instructed to revoke the passport of the Appellant at all costs.

(Y) The Impugned Order does not even consider, let alone decide, a large number of submissions made by the Appellant. The Impugned Order does not even consider or decide that the basic jurisdictional facts, which were a pre-condition to the Respondent assuming and/or exercising jurisdiction under Section 10 (3) of the Act. The Appellant had urged before the Respondent that the Enforcement Directorate was not a Court and a mere summons to remain present was not a warrant. The present case was therefore not one where a citizen was not surrendering pursuant to a warrant issued by a Court. Jurisdiction under Section 10(3) of the Act could not be assumed on a mere failure to respond to a summons (even assuming for the sake of argument that the said failure was willful). The Respondent has also not even noted, let alone considered, the submissions of the Appellant that the contravention of FEMA is an offence which involves civil liability; that the failure to respond to a summons would result in the imposition of a monetary penalty and that the Enforcement Directorate, whilst

exercising powers under FEMA, has no power of custodial interrogation. Consequently, a mere failure to appear pursuant to a summons issued by the Enforcement Directorate under FEMA did not attract the provisions of Section 10 (3) of the Act and certainly did not amount to being *"in the interest of the general public".*

(Z) The Respondent has similarly failed to even record, let alone deal with the submission of the Appellant's advocate, that if the request of the Enforcement Directorate was countenanced, the result would be chaos, since the Passport of a citizen would be impounded at the instance of a large multitude of regulatory / enforcement agencies, whose requests were not complied with. Such agencies would therefore without adopting measures and/or remedies available to them under their respective enactments, write to the Passport office and the passport office would revoke passports on such requests. Such a scenario would be abhorrent to the rule of law.

(AA) The Impugned Order does not even note, let alone consider and/or discuss the primary submission of the Appellant, that the jurisdiction and power under Section 10 (3) of the Act was an extraordinary jurisdiction, involving extreme consequences, affecting the personal liberty and freedom of a citizen and was therefore to be sparingly exercised with extreme caution. For the jurisdiction under Section 10 (3) of the Act to be exercised, not only was it imperative that the requirements of 10 (3) (c) exist and/or be made out, but also that this be coupled with the objective satisfaction (not subjective satisfaction as claimed in the Impugned Order) that the passport authority considered

it *"necessary to impound and/or revoke a citizens passport"* AND that such objective satisfaction be recorded in writing and that the order under Section 10 (3) record such objective satisfaction with reasons. In the present case, the Impugned Order falls foul of each of the above requirements. Not only were the preceding jurisdictional conditions wanting in the present case, but there is nothing on the record which can justify *"the necessity"* of an order of revocation of the Appellant's passport. The Impugned Order also does not contain any discussion or finding on why such "necessity" existed. The Impugned Order has proceeded on a legally fallacious assumption that if the jurisdictional requirements of Section 10 (3) were considered as having been met, an order for impounding and/or revocation must follow. The Impugned Order also does not meet the objective satisfaction test. The Respondent has erroneously treated the jurisdiction under Section 10 (3) of the Act as requiring "subjective satisfaction". The Respondent has clearly misdirected himself in law in passing the Impugned Order.

(BB) The Impugned Order also completely ignores a well-settled legal principle enshrined in Administrative Law, that in quasi-judicial adjudications, the doctrine of proportionality is required to be applied. Had the doctrine of proportionally been applied in the present case, the Impugned Order could not and ought not to have been passed. In the present case, the Impugned Order is manifestly infirm and illegal inasmuch as it ignores and/or deliberately overlooks the well-settled doctrine of proportionality. Even if it is assumed for the sake of argument that the conditions under Section 10 (3) of the Act are met, the ultimate order of revocation of a citizen's passport, is a measure which is disproportionate to the alleged facts, let alone established

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facts. The Respondent has completely failed to appreciate that an order of revocation of a passport is an extremely draconian order and such an order ought not to have been passed on a mere failure or even a refusal to attend pursuant to a summons. In any event, a revocation of the Appellant's passport would not sub-serve "stated" purpose behind the passing of the order, since the Appellant would never be able to appear before the Enforcement Directorate in Mumbai, with his passport impounded.

(CC) There has been a complete and total violation of the principles of natural justice in the present case. These violations are many in number and extend to almost all aspects of the inquiry under Section 10 (3) of the Act. These violations denude the very foundation of the inquiry even basic norms of fairness. These violations have completely vitiated both the adjudicatory process and the ultimate decision. The Impugned Order is therefore a nullity. The Appellant's advocates, in the communications filed by them, have extensively adverted to the manner in which the adjudication was conducted and why and how principles of natural justice; basic norms of fairness; and established principles of fair adjudication, have been deliberately disregarded. It is beyond the scope of the present appeal to advert to these in detail. The objections made in this behalf have been set out in the statement of facts above and the Appellant repeats, reiterates and confirms these as a part of the grounds. The Appellant, however, is concisely enumerating instances of violation of principles of natural justice; substantive and/or procedural unfairness; and how the entire

proceeding before the Respondent was unjust, unfair, premeditated; on the dictates of others; and indicative of apparent *mala fides*.

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(DD) The Impugned Order and the procedure followed by the Respondent violated all the norm, canons of fairness and natural justice. This violation started from the very threshold of the enquiry. It is the fundamental principle of natural justice that a person must be provided with the material which is sought to be relied upon and/or used against him. In the present case, this requirement was totally absent. The proceedings commenced by the respondent were pursuant to a request made by the Enforcement Directorate. To start with, the Appellant was not provided either with the requests or its contents. After extensive correspondence pointing out that this material was required to be made available, the Appellant was provided with a sanitized extract of the two communications addressed by the Enforcement Directorate. The entirety of the record made available by the Enforcement Directorate to the Respondent / passport office was not made available. Even the full extent of the two communications in question was not made available. As a result thereof, to put it plainly and mildly, the Appellant was wholly unaware of the case, which he had to meet. Furthermore, the Appellant admittedly did not have available with him the material, which was made available to the Respondent / passport office by the Enforcement Directorate. This was a serious violation of the principles of natural justice. The Appellant is not required in law to establish, that this violation occasioned a miscarriage of justice. Be that as it may, the Appellant submits that it is only to be expected that this material, which was made available to the Respondent / passport office by the Enforcement Directorate and

withheld from the Appellant, would have consciously or subconsciously affected the decision of the Respondent. In any event, this withholding of material clearly vitiated the adjudicatory process. In any event, it is respectfully submitted that the Respondent has in functioning the manner alleged, not only ensured that justice is not done but it is clearly evident that to the Appellant (or any reasonable person similarly situated) justice would not appear to have been done. That the Respondent completely chose to ignore the fact that he was adjudicating upon an adversarial lis between the Appellant and the Enforcement Directorate and therefore could not privately receive and /or have access to information and/or material from the Enforcement Directorate, yet not supplied the Appellant with the same, is clearly suggestive of apparent *mala fides*.

(EE) The mala fides and/or the violation of natural justice is even more apparent and glaring when one considers the stated basis for refusing to make the said material available, viz. that it was a confidential communication between two Government departments. The Appellant had, in the course of hearing and in the written responses, repeatedly asserted that the Respondent was not functioning as a Government department but as an adjudicating officer. The Respondent could not therefore identify himself with a Government Department. In any event, as an adjudicating officer, the Respondent was required to make available all available material, which was presented before him. Notwithstanding this, the Respondent did not make the same available. The Respondent also completely ignored the submissions made by the Appellant that there was nothing confidential or classified in the information made available by the Enforcement Directorate. It was

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settled law that in cases of adjudication, the accused / noticee was entitled to receive all evidence / material which w as sought to be used against him. The Courts have held that the accused / noticee was entitled to even receive communications protected under the Official Secret Act. A large number of judgements were cited to buttress this submission. It is however unfortunate that the Respondent has not taken note of any of the aforesaid judgments or arguments, and has merely paid lip service to the same by concluding that the relevant portion of the Enforcement Directorate communications was made available. This is a clear violation of the principles of natural justice.

(FF) There has been a further violation of the principles of natural justice and the principles of fair adjudication in the manner in which the enquiry has been conducted. The passport office has deliberately refused to take cognizance of any material, which if looked at would have supported the case of the appellant. The passport office was requested to call for the records from the Enforcement Directorate and/or the Mumbai Police. As this would have established the case of the appellant, this was consciously not done. Not only is this a violation of natural justice, but this is evidence of apparent bias and the fact that the respondent was acting on the dictation of others.

(GG) There has been a further violation of natural justice in the manner in which the respondent sought to assume jurisdiction midway to the proceedings. It is a matter of record the proceedings were commenced by a communication dated 15th October, 2010 (which the respondent has described as a show cause notice / this communication / show cause notice was addressed by the Assistant Passport Officer, Policy,

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and called upon the Appellant to furnish his explanation before the Assistant Passport Officer. Thereafter a large number of communications were addressed to and responded by the Assistant Passport Officer, Policy. The record, therefore, clearly records and reflects that the Assistant Passport Officer, Policy, was to be the adjudicating authority. In this view of the matter, the decision of the Respondent to introduce himself midway through an adjudicatory process and take over the same can only be described as shocking and one which militated against all known principles of natural justice. When this was objected to, the Assistant Passport Officer and the Respondent sought to persist with this illegality. The explanation preferred to justify the presence of the Respondent makes the *mala fides* in the present case even more apparent. It is respectfully submitted that the entire case put forth that the hearing was to be conducted by the passport office and that the Respondent, as the head of the passport office, could attend the hearing is complete non-sense. The said explanation is contrary to the provisions of the Act and the Rules. It was pointed out at the time of arguments and in the written communications addressed that this contention was contrary to the plain words of the statute. The statute clearly prescribed that the adjudication would be before one adjudicating authority (Passport Officer) and not before a Passport Office. The Respondent could not therefore take over the proceedings midway and the attempts to introduce the Respondent midway was therefore a clear pointer to the fact that these proceedings were being dictated by someone else. The Respondent had been introduced because he was considered more pliant and more amenable to these dictates. It was also pointed out

that if the construction placed upon the statute by the Respondent was accepted, the consequences would be absurd to say the least. There were about 15 officers in the passport office in Mumbai, who could be designated as an adjudicating authority under the rules and therefore a hearing could be conducted by any one or more or all of them. These contentions have been completely ignored and/or disregarded and the Impugned Order does not even make a reference thereto.

(HH) The violation of natural justice persisted during the course of hearing. This is clearly evident from the fact that admittedly the hearing was cut short and closed despite strenuous opposition from the Appellant's advocate. As a result the Appellant's advocates were unable to complete their submissions. The fact that there was no urgency whatsoever in the matter is clear from the fact that the Impugned Order has been passed almost three and half months after the hearing was cut short. The interest of justice and fairness required that a further personal hearing be granted to the Appellant, particularly since the present matter involved a serious consequence.

(II) The Appellants submits that all the above grounds also demonstrate the apparent *mala fides* of the Respondent, which also vitiates both the adjudicatory process and the Impugned Order.

~~(II)~~(JJ) The Respondent has simply wished away and ignored submissions that could be said to be inconvenient. The Respondent has not even noted the extensive material produced by the Appellant to show that the threat perception was real and serious and not imaginary or exaggerated. The impugned order however makes no reference to any of this. An illustrative case in point is the contents of the letters dated

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26th November, 2010 (and paragraph 16 of the letter bearing No. 9606 and paragraph 29 of the letter bearing No.9811 of 2010 dated 6th December, 2010) in particular. Similarly, the Respondent has totally failed to even note, let alone consider the response of the Appellant on the point that there was no violation of FEMA at all. An illustrative case in point is the contents of paragraph 27 of the letter dated 26th November, 2010 bearing No. 9606 of 2010.

~~(JJ)~~(KK) The Respondent, at the very least, ought to have, appreciated that the exercise or assumption of jurisdiction, by him, was premature.

~~(KK)~~(LL) The Respondent erred in totally ignoring that, in any event, the decision to impound the Appellant's passport was a result which was excessive, harsh, oppressive and unjust. The Hon'ble Supreme Court of India had described the action of impounding of a passport as a 'punishment'. The facts of the present case could not by any stretch, justify the imposition of such a punishment.

~~(LL)~~(MM) The Respondent had not noted or considered the Appellant's submission that Section 10(3) which the Appellant was accused of violation, comprised of several distinct heads. The Show Cause Notice had not even indicated which head was being invoked. Furthermore, even at the stage of hearing/arguments, when the Respondent was called upon to indicate, which head was being referred to or relied upon, no response was forthcoming. This completely violated the rule of natural justice.

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~~(MM)~~(NN) The Impugned order does not refer to or consider any of the judgements/law cited by the Appellant. At the time of the two hearings, a large number of judgements were cited. ~~A list of the judgements cited is set out in a Schedule annexed and marked as Tab __ hereto.~~ In the communication dated 6th December, 2010, the Appellant's Advocates had referred to several decisions. Regretably, none of these have been dealt with.

~~(NN)~~(OO) The impugned order also makes no reference to the role of the Foreign Secretary of the Govt of India. This was not only set out in the communications sent by the Appellant's Advocates (which is reiterated) but also at the time of the hearing. Despite the same, the impugned order is completely silent on this score.

~~(OO)~~(PP) The impugned order totally ignores the submission of the Appellant's Advocates (recorded in paragraph 21 of their letter dated 6th December, 2010) that there was no question of either impounding or revocation of the Appellant's passport. AS the impugned order has purported to revoke the Appellant's passport, the Appellant is dealing with the same for the present. The reference to revocation of the Appellant's passport was made for the first time in the communication dated 15th November, 2010. This was completely misconceived. Admittedly, the present proceedings had been instituted on the request of the Enforcement Directorate. Although the full text of the communications between the Enforcement Directorate and the Passport Office had not been made available, the sanitized extract that was made available, clearly indicated that the Enforcement Directorate was described as wanting "impounding". Of the Appellant's passport.

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The entire proceedings had therefore been instituted on a request to impound and the proceedings and the jurisdiction exercised by the Respondent could not have extended beyond the request to impound. There was therefore no question of the Appellant's passport being revoked in the said proceedings. Even the communication dated 15th October, 2010, did not make any reference to revocation of the Appellant's passport : instead it called upon the Appellant to "produce" his passport. This could only be for impounding. AS the Appellant was not within jurisdiction, his passport could never be impounded. The Respondent has not even noted or considered these arguments.

~~(PP)~~(QQ) The impugned order, similarly, totally ignores the argument (recorded in paragraph 25 of the letter dated 6th December, 2010) that historically the Enforcement Directorate had claimed a power to impound a passport, which was taken away and held not to be available to itafter the judgement of the Hon'ble Supreme Court in the case of Suresh Nanda. In that case it was held that this power could only be exercised by the authorities under the Act ; FEMA was a statute which only involved civil consequences ; and only a penalty could be imposed for substantive violations of FEMA .In the present case, what the Enforcement Directorate was seeking to do was to do through the Respondent what it could not do itself directly. This argument was once again ignored and not noted.

~~(QQ)~~(RR) The impugned order does not note or consider the argument (recorded in paragraph 27 of the letter dated 6th December, 2010 addressed by the Appellant's Advocates) that the Hon'ble Supreme Court of India, had, in the case of CBI vs Kaskar (AIR 1997 SC 2494)

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held that a court did not have the power to issue a warrant in aid of an investigating agency. It was urged by the Appellant's Advocates that if a court did not have this power, then it was much less for an adjudicating authority , under the Act, to do so.

~~(RR)~~(SS) The finding in the third paragraph at page 2 of the Impugned Order is incorrect. The Appellant was not informed in detail regarding the contents of the communications received by the Enforcement Directorate on 04.10.2010 and 15.10.2010. What was supplied was, at the highest, a sanitized extract of the said two letters. Moreover, these extracts , as supplied, made no sense. This was duly pointed out by the Appellant's advocates in their written replies and at the time of the hearing.

~~(SS)~~(TT) The contents of the second paragraph of page 3 are clearly erroneous and in fact require that the impugned order be set aside. The finding that " As the Noticee, Shri Lalit Kumar Modi failed to do so, the matter was referred to the Regional Passport Officer as head of the Office " is in law completely misconceived. A failure, by the Appellant, to attend with his passport, could not, in fact and in law, be the basis for adjudicatory proceedings to be referred to a third party, even if he be the head of the Department. The person who had issued the Show Cause Notice was required to decide the matter. In fact, inherent in the said statement is the admission that the entire object of the issuance of the communication dated 15th October, 2010, was to obtain possession of the Appellant's passport.

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~~(TT)~~(UU) The observation that the Show Cause Notice was issued by the Assistant Passport Officer (Policy) as a delegate is false and contrary to the Notice itself, which clearly indicates that the Assistant Passport Officer (Policy) was acting in his own right. This is further corroborated by his subsequent actions. The case of him acting as a delegaThe finding that the Appellant deliberately absented himselfte is a dishonest afterthought.

~~(UU)~~(VV) The entirety of paragraph 7 on page 4 is erroneous. Firstly, the reference to allegations of irregularities allegedly committed by the Appellant is wholly improper. The Enforcement Directorate had not issued any Show Cause Notice on merits, which is the very first step where there is a allegation of wrong doing. In the absence thereof, the Respondent , as a matter of law, could not take any such allegations into consideration. To do so would be to violate all norms of justice and fair play : the Appellant would be condemned on the basis of allegations which were yet to be made or brought. Secondly, the finding that “Moreover there is a reasonable suspicion that that Shri Lalit Kumar Modi has acquired huge amounts of money which have been parked outside India by him ….” Underlines the complete illegality of the entire adjudication process. The Respondent had embarked upon an inquiry which was not in his domain (on his own showing) and prima facie condemned the Appellant on an allegation which even the Enforcement Directorate had not made or brought. Thirdly and in any event, the said prima facie finding was un-sustainable on the record. There was nothing on the record to warrant such a finding. On the contrary the record contained material indicating to the contrary which the Rwspondent ignored completely. The finding

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that "For these purposes a thorough investigation is required on a massive scale in the public interest. Shri Lalit Kumar Mody is very well aware …… … and is repeatedly making himself unavailable to the concerned authorities to aid and further the ongoing investigations on frivolous and untenable pretexts. " is also completely un sustainable for the reasons which have already been extensively adverted to. There was no material for the Respondent to arrive at such a conclusion. The Respondent had, in reaching the said conclusion, ignored the entirety of the material on record. The Respondent also embarked on an inquiry which the Enforcement Directorate ought to have done but did not do because it was aware that the conclusion thereof would support the Appellant.

~~(VV)~~(WW) The finding that the interest of the general public would be subserved by initiation of action under Section 10(3) is not only incorrect and misconceived but underlines the almost casual manner with which the Respondent has exercised power and jurisdiction under Section 10 of the Act. The mere mechanical use of the words "in the interest of the general public" as a mantra would not bring , could not bring and did not bring the present case within the meaning of Section 10(3). The words "in the interest of the general public" had a clear and defined meaning and could not cover the facts of the present case.

~~(WW)~~(XX) The finding in the fourth paragraph on page 5 of the impugned order that "suffice it to say that at the present stage this office has ascertained all the facts" is plainly erroneous. The record demonstrated that the Enforcement Directorate had made a selective disclosure to the Respondent. In fact during the course of the hearing

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the Respondent had admitted that the Enforcement Directorate had not forwarded the reply of the Appellant and other supporting material (filed with the Enforcement Directorate) to the Respondent.

(YY) The reference, in the fourth paragraph of the impugned order at page 5 to " loss of foreign exchange running into hundreds of crores …. " is clearly erroneous and ought not have been and could not have been made/done for the reasons set out above.

(ZZ) The finding at page 3 un-numbered 4th para that the Appellant "were given a full and proper hearing ……" is erroneous and contrary to law. The Adjudicating Authority has failed to appreciate that the true purport of the principles of natural justice and audi alteram partem. The Adjudicating Authority failed to appreciate that hearing and reasonable opportunity is not to be determined by the number of hours that are given for hearing. It is an opportunity to deal with the issues of fact and law. The Authority should have appreciated that since he was dealing with the questions of the Appellant's fundamental rights that were serious and disputed questions of fact and law and there was any application seeking cross examination of officers of Enforcement Directorate and also to call for records from the Mumbai Police and the Enforcement Directorate that were relevant to the issues inter alia viz. the veracity of the contention of the Enforcement Directorate which forms the basis of the Show Cause Notice and now the impugned order. None of these applications have been granted which itself constitutes a violation of natural justice. Inadequate opportunity was granted to make submissions on fact and law, the matter which has

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been recorded in the Appellant's communication dated 19th November, 2010, 26th November, 2010 and 6th December, 2010.

(AAA) The finding at page 4 un-numbered 2nd and 3rd paragraph that the Appellant was granted "sufficient and even additional time". During the personal hearing held on 18.11.2010 and 26.11.2010 a request was made for one more hearing and the finding in the next para that "it was felt that no further hearing was necessary to be held" are contrary to the facts and violation of natural justice.

(BBB) The impugned order does not even consider any of the law, does not even consider any of the law that was submitted before the adjudication authority and has not dealt with the judgements. The Adjudicating authority was bound by the settled law on various issues that were submitted before him. It is submitted that the failure to deal with any of the decision and the binding law on the subject itself renders the impugned order bad in law. In fact none of those contentions have even been settled by the adjudicating authority and the failure to consider them would itself constitutes the violation of natural justice. It would result in the order being non speaking order.

(CCC) The impugned order at page 4, unnumbered para 6 purportedly seeks to reproduce the information that was communicated by the Enforcement Directorate, the Passport Authority and it was contained in letter dated 1st November 2010 purportedly in compliance of natural justice. The passport authority has taken into consideration the contentions of the Enforcement Directorate viz. that the Appellant was required to join investigation and that he "*making himself unavailable to the concerned authorities to aid and further the ongoing investigation*

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on frivolous and untenable pretext" and based on these comments of the Enforcement Directorate in 5th para has come to give erroneous finding.

(DDD) It is submitted that this finding is contrary to the facts which have been placed before the Passport authority. The Appellant has made detailed submissions and placed reliance on various documents which establish the genuineness of the reasons why he is unable to remain physically present before the Enforcement Directorate. The Appellant has also placed on record his letters to the Enforcement Directorate wherein he has joined investigation and provided the documents that are in his possession. He has also vide letter dated 7th September, 2010, 12th October, 2010 and 26th November, 2010 to the Enforcement Directorate recorded his willingness to submit to interrogation. Thus to mechanically adopt the contentions of the Enforcement Directorate that the Appellant is making himself unavailable to the authorities itself reflects non application of mind and the finding that the Appellant has deliberately and without untenable justification refuse to appear also does not taken into consideration of material placed before the Passport authority. It is significant to note that there is no reference to any of these materials in the impugned order and there has been no appreciation by the Passport authorities on these facts. The Passport authority ought to have confirmed the veracity of these contentions of the Enforcement Directorate before accepting the same. By rejecting the request of the Appellant to summons the record of the Mumbai Police and Enforcement Directorate to confirm the veracity of the Appellant's contentions regarding the security threat and to mechanically accept the contentions of the Enforcement Directorate on

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a matter where there is a serious disputes on facts reflects the non-application of mind and the failure of natural justice on the part of the Passport authority.

(EEE) The finding at page 5 un-numbered 2nd para that "*this office is not conferred with the jurisdiction to sit in judgement on other matters and issues and cannot therefore act beyond the scope of its jurisdiction*" is erroneous and reflects the complete lack of understanding on the part of Passport authority beyond the scope of its jurisdiction whilst acting under Section 10 (3) of the Passport Act. The Passport authority certainly carries on duty of quasi judicial function (See Menakha Gandhi's case) whilst discharging such quasi judicial act before tranquiling upon the situation of fundamental rights, the Passport authority is required in law to determine the need and justification for action under Section 10 (3) of the Passport act. In that context if false or irrelevant or disputed facts are placed before the quasi judicial authority for invoking appearance under the Passport Act. It is imperative duty of the Passport authority to determine the definition of authenticity, veracity and credibility of the contentions on the basis of which his jurisdiction is sought to be invoked. In the instant case the Appellant had categorically disputed and challenged the contentions of the Enforcement Directorate that he was not joining and not co-operating with the investigation agency and not submitting himself into interrogation and that be on frivolous and inadequate grounds. He had placed on record the facts and documents to demonstrate that he was co-operating with the statutory agency and willing to submit to interrogation and also placed on record the material to justify the security threat to his and his family members' life which prevented him

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from being physically present in the office of the Enforcement Directorate at Mumbai. It was the duty of the Passport authority to examine this issue since this went to a very exercise of his powers. His failure to go into these issues and verify the facts and to come to the finding that he does not have a jurisdiction to sit in judgement on other matters itself shows a complete lack of understanding of the scope and power of the Passport authority acting in quasi judicial jurisdiction under Section 10 (3). It was his duty to ascertain the correct facts which he has failed to do.

(FFF) The Passport authority failed to appreciate that it was not the contention of the Appellant that the Passport authority had to determine the FEMA violation and exonerate the Appellant. The Appellant had placed on record and made submissions on the manner in which the investigations were being conducted to demonstrate the malafide action to the Enforcement Directorate and request the Passport authority to take action against the Appellant's passport.

(GGG) The impugned order at page 5 unnumbered para 3 erroneously observes that " this office has received official confidential communication from the Directorate of Enforcement that in view of the magnitude of the fraud and the irregularities and violations of law committed by Shri Lalit Kumar Modi, his presence for the purpose of investigation is imperative and therefore a request for revocation of the passport of Shri. Lalit Kumar Modi has been made". The Passport Authority in his letter dated 1st November, 2010 whilst summarizing the information provided by the Enforcement Directorate to the Passport authority inter alia communicated the request of the Enforcement

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Authority to the Passport Authority as under: "*it would be in the general interest and in the interest of investigations into cross irregularities committed by the Appellant in particular that his passport is impounded in compliance of the same should be enforceable*".

It is thus apparent that there has been complete non-application of mind by the Passport authority when it observes that Environment Directorate made a request for revocation of the Appellant's passport. The Passport authority has mis-guided himself in passing the order of revocation in the wrong belief that a request for revocation was made when in fact no such request has been made.

(HHH) The impugned order at page 5 unnumbered para 3 erroneously finds that "*this office is therefore satisfied that public interest requires that Shri Lalit Kumar Modi make himself available for investigation, but Shri Lalit Kumar Modi is deliberately absenting himself from the authorities, in order to scuttle / hamper the investigations, into a matter which is significantly important in the interest of the general public*".

The finding is contrary to the earlier finding dealt with in unnumbered para no. 2 above that "this office is not conferred with the jurisdiction to sit in judgement on other matters and issues and cannot therefore act beyond the scope of its jurisdiction. If that be the case the finding of the Passport authority that the Appellant is deliberately absconding himself from the authorities in order to scuttle / hamper the investigations, is a finding on the matter which is pending adjudication before the Special Directorate under the FEMA in pursuance of the Show Cause Notice issued to the Appellant by the

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Enforcement Directorate dated 20th September, 2010. Since that issue was pending determination in the adjudication proceedings under FEMA the Passport authority ought not to have come to its own finding in that regard in fact the Appellant had categorically submitted that the Passport authority should have awaited the outcome of the said adjudication proceedings before passing the impugned order.

(III) Without prejudice it is further submitted that the finding of the Passport authority is liable to be set aside in as much as the Passport authority has not even considered the material placed before him by the Appellant regarding the reasons for his not been able to physically remain present in the office of the Enforcement Directorate at Mumbai. The Passport authority failed to appreciate that the Appellant never absented himself for interrogation from the authorities. It merely expressed his inability to remain present in their office at Mumbai. He was willing to submit himself into interrogation through video link or office of the Indian High Commission London or any other modality. The Passport authority conveniently seeks to avoid going into the alternative procedure for interrogation on the ground that those not even the purview of his jurisdiction and yet in fact goes into the same by revoking the Appellant's passport to secure his presence in Mumbai for interrogation by Environmental Directorate. The Passport authority had a duty to apply his mind on all these aspects of the matters before taking action against the Appellant's passport. The impugned order erroneously finds at page 6, 1st unnumbered paragraph as under: "the suggestions by Shri Lalit Kumar Modi for alternative procedures for his interrogation are not within the purview of this office to consider.

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However, it may not be out of place to state that no right is vested in an accused to decide the time and manner and mode of investigation. An accused is required to be interrogated in accordance with the provisions of law as may be suitable to the interrogating agency and special privileges, if any requested for by an accused cannot be acceded to and therefore it is necessary that Shri Lalit Kumar Modi present himself before the authorities within the territorial limits of India.

(JJJ) The Passport authority's claim that it has no jurisdiction to go into matters of Enforcement Directorate, in the aforesaid findings, determines the manner of investigation and interrogation by the Enforcement Directorate. Clearly the findings are self contradictory.

~~Apart from these, the Passport authority erroneously designated the Appellant "an accused". This itself reflects complete non application of mind. The passport authority failed to appreciate that there are no criminal proceedings under FEMA and consequently there cannot be any person designated as "an accused". The nature of the proceedings under FEMA have been held to be severe in nature and the manner of inquiry, investigation and interrogation under FEMA are no longer to be concluded with those of a criminal investigation. They must be treated as civil inquiries. It is for this reason that the Enforcement officers have been conferred with powers of a Civil Court for summoning witnesses by virtue of Section 37 of FEMA read with Section 131 of the Income Tax Act read with Order 5 of the Code of Civil Procedure. Consequently it was erroneous that the Passport authority to come to a finding that the Appellant is required to be interrogated in accordance~~

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~~with the provisions of law as may be suitable to interrogating agency. Under the Civil Procedure Code there is a power to issue the commission to witness this itself demonstrates that the Enforcement officers go in accordance with the provisions of law regarding the statement of the Appellant in London. The Passport authority also failed to appreciate that Section 37 of FEMA does not provide that the interrogation must take place in the office of the Enforcement Directorate only.~~

(KKK) The impugned order at page 7 unnumbered para 2, came to a finding in the said para. The Passport authority failed to appreciate that there was also public interest in protecting the life of the Appellant. The Passport authority failed to determine the correct facts in respect of the security threat to the Appellant and has come out without any basis found that the bogey of a security threat is virtually non-existent. The Passport authority failed to appreciate that the security threat was genuine. It is established from the fact that Mumbai police offered him police protection, he could not have concluded that the security threat was non-existent. The Appellant's protection does not wipe away the threat, Furthermore the Passport authority failed to get with the Mumbai police for reasons unknown to the Appellant suddenly withdrew the down rated and withdrew the police protection. The passport authority failed to appreciate that whilst he was in India secured protection from foreign security services only on account of the fact that the State was not provided adequate protection. Since he was suspended as IPL Commissioner on 25th April, 2010 the State down rated and withdrew its protection. The passport authority failed to

appreciate that the foreign security services can only provide limited protection. It is the duty of the State, especially without in its possession intelligent and information, to provide protection for a citizen, the State was in possession of such categorical information and yet did not provide adequate protection to the Appellant. The Passport Authority failed to appreciate that its duty for saving a citizen to take steps to provide protection to his own life and life of his family. Therefore to suggest that the Appellant has set up a bogey reflects the complete non-application of mind and lack of understanding of the responsibilities of the State in its duty to the citizen and the fact that the State has failed to discharge those duties to the Appellant. The Appellant thus submits that the impugned order suffers from non-application of mind and bias and liable to be set aside.

~~(XX)~~(LLL) The impugned order is even otherwise contrary to the facts on record and settled law.

~~(YY)~~(MMM) The Appellant, therefore, submits that the Impugned Order dated 3rd March, 2011 be set a side.

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~~7.~~8. The Appellant craves leave to add, alter, amend and modify any and/or all of the aforesaid grounds.

~~8.~~9. The Appellant is separately filing an interim application seeking stay of the Impugned Order with reasons for the same.

PRAYERS

For the reasons stated above, the Appellant submits that the Impugned Order

dated 4th March 2011, and received by the Appellant on 4th March, 2011, ought not to have been passed by the Respondent. The Appellant further submits that grave and irreparable injustice, harm, loss, prejudice and damage will be caused to it if the relief and orders are not granted as prayed herein.

The appellant most respectfully submits that the relief prayed herein will meet the ends of justice and balance of convenience is in their favour. In the premises aforesaid, the Appellants pray that:

a) the Impugned Order dated 4th March 2011 be quashed and set aside;
b) Cost of this Appeal be awarded in favour of the Appellant; and
c) For such other orders or directions as facts and circumstances of the case may warrant.

(AMIT NEHRA)

ADVOCATE FOR APPELLANT

Date : April 2011

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BEFORE THE CHIEF PASSPORT OFFICER

MINISTRY OF EXTERNAL AFFAIRS,

NEW DELHI

APPEAL NO. OF 2011

Lalit Kumar Modi ... Appellant

Versus

Regional Passport Officer, ... Respondent

AFFIDAVIT

I, Mehmood M. Abdi S/o Late Mr. M.N. Abdi, aged about 50, years, R/o A-901, Meera Towers, Near Mega Mall, Oshiwara, Andheri (West), Mumbai-400 053, do hereby solemnly affirm and state as under:

1. That I am the Constituted Attorney for the Appellant in the present Appeal and am well conversant with the facts and circumstances of the present case and as such am competent to depose by way of this affidavit.

2. That I have read and understood the contents of the accompanying Appeal Pages 1 to 102, which have been drafted under my instructions and state that all the facts stated therein are true and correct to the best of knowledge and belief and legal submissions are made on legal advice received and believe to correct.

3. That the annexures are true copies of their respective originals.

DEPONENT

VERIFICATION

Verified at New Delhi on this 1st day of April, 2011 that the contents of the above affidavit are true and correct to my knowledge, that no part of it is false and that nothing material has been concealed therefrom.

DEPONENT

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BEFORE THE CHIEF PASSPORT OFFICER

MINISTRY OF EXTERNAL AFFAIRS,

NEW DELHI

APPEAL NO. OF 2011

Lalit Kumar Modi … Appellant

Versus

Regional Passport Officer, … Respondent

AFFIDAVIT

I, Mehmood M. Abdi S/o Late Mr. M.N. Abdi, aged about 50, years, R/o A-901, Meera Towers, Near Mega Mall, Oshiwara, Andheri (West), Mumbai-400 053, do hereby solemnly affirm and state as under:

1. That I am the Constituted Attorney for the Appellant in the present Application for stay and am well conversant with the facts and circumstances of the present case and as such am competent to depose by way of this affidavit.

2. That I have read and understood the contents of the accompanying Application for stay Pages 1 to ___, which have been drafted under my instructions and state that all the facts stated therein are true and correct to the best of knowledge and belief and legal submissions are made on legal advice received and believe to correct.

DEPONENT

VERIFICATION

Verified at New Delhi on this 1st day of April, 2011 that the contents of the above affidavit are true and correct to my knowledge, that no part of it is false and that nothing material has been concealed therefrom.

DEPONENT

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01.04.2011

To,

The Chief Passport Officer/Regional,
Passport Officer,
New Delhi.

Sub:- Appeal under Section 11 of Passport Act, against the order dated 04.03.2011 passed by the Regional Passport Officer, Mumbai in the matter of Lalit K. Modi, bearing Passport No.Z1784222.

Sir,

The undersigned is preferring an Appeal against the aforesaid order as Constituted Attorney of the Appellant and therefore, as per the requirements of law wishes to deposit Rs.25/- as the fees for Appeal. Kindly accept the deposit for the same.

Yours sincerely

Mehmood M. Abdi
Constituted Attorney
For the Appellant

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01.04.2011

To,

The Chief Passport Officer/Regional,
Passport Officer,
New Delhi.

Sub:- Request for permission to file the Appeal without fees.

Sir,

The Appellant is filing the accompanying appeal, however, in view of the treasury being closed, has not been able to deposit the fees. The appellant submits that he would deposit the requisite fees and furnish the receipt therefore on the next working day. The accompanying appeal may kindly be accepted today without the requisite fees.

Yours sincerely

Mehmood M. Abdi
Constituted Attorney
For the Appellant

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BEFORE THE CHIEF PASSPORT OFFICER

MINISTRY OF EXTERNAL AFFAIRS,

NEW DELHI

APPEAL NO. OF 2011

Lalit Kumar Modi … Appellant

Versus

Regional Passport Officer, … Respondent

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7.	Tab 6: Copy of communication of the Appellant's Advocate dated 29th October, 2010, recording the complete failure to respond to any of their earlier requests.	116 – 118
8.	Tab 7: A copy of this communication together with a large number of documents submitted therewith included in the Compilation.	119 – 230
9.	Tab 8: A copy of this communication together with a large number of documents submitted therewith included in the Compilation.	231 – 234
10.	Tab 9: A copy of this chronology is included in the Compilation.	235
11.	Tab 10: Copy of communication dated 1st November, 2010 by Assistant Passport Officer (Policy).	236 – 239
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BEFORE THE CHIEF PASSPORT OFFICER

MINISTRY OF EXTERNAL AFFAIRS,

NEW DELHI

APPEAL NO. OF 2011

[Arising out of the impugned order dated 4th March, 2011 passed by the Regional Passport Officer, Mumbai)

IN THE MATTER OF:

Lalit Kumar Modi … Appellant

Versus

Regional Passport Officer, … Respondent

WITH

I.A.NO. /2011 An Application for stay

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE APPELLANT: **AMIT NEHRA**

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